

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

	x	
	:	
THE CITY OF HUNTINGTON,	:	Civil Action
	:	
Plaintiff,	:	No. 3:17-cv-01362
	:	
v.	:	
	:	
AMERISOURCEBERGEN DRUG	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	

	x	
	:	
CABELL COUNTY COMMISSION,	:	Civil Action
	:	
Plaintiff,	:	No. 3:17-cv-01665
	:	
v.	:	
	:	
AMERISOURCEBERGEN DRUG	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	

BENCH TRIAL - VOLUME 17
BEFORE THE HONORABLE DAVID A. FABER, SENIOR STATUS JUDGE
UNITED STATES DISTRICT COURT
IN CHARLESTON, WEST VIRGINIA

MAY 25, 2021

APPEARANCES:

**For the Plaintiff,
Cabell County Commission:**

MR. PAUL T. FARRELL, JR.
Farrell & Fuller, LLC
1311 Ponc De Leon, Suite 202
San Juan, PR 00907

MR. ANTHONY J. MAJESTRO
Powell & Majestro
Suite P-1200
405 Capitol Street
Charleston, WV 25301

MR. DAVID I. ACKERMAN
Motley Rice
Suite 1001
401 9th Street NW
Washington, DC

MR. PETER J. MOUGEY
Levin Papantonio Thomas Mitchell Rafferty & Proctor
Suite 600
316 South Baylen Street
Pensacola, FL 32502

MR. MICHAEL J. FULLER, JR.
Farrell & Fuller
Suite 202
1311 Ponce De Leon
San Juan, PR 00907

APPEARANCES (Continued):

**For the Plaintiff,
Cabell County Commission:**

MS. MILDRED CONROY

The Lanier Law Firm
Tower 56
126 East 56th Street, 6th Floor
New York, NY 1022

MS. PEARL A. ROBERTSON

Irpino Avin Hawkins Law Firm
2216 Magazine Street
New Orleans, LA 70130

MR. MICHAEL W. WOELFEL

Woelfel & Woelfel
801 Eighth Street
Huntington, WV 25701

MR. CHARLES R. WEBB

The Webb Law Center
716 Lee Street East
Charleston, WV 25301

MS. ANNIE KOUBA

Motley Rice
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464

MR. MARK P. PIFKO

Baron & Budd
Suite 1600
15910 Ventura Boulevard
Encino, CA 91436

**For the Plaintiff,
City of Huntington:**

MS. ANNE MCGINNESS KEARSE

Motley Rice
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464

MS. LINDA J. SINGER

Motley Rice
Suite 1001
401 Ninth Street NW
Washington, DC 20004

MS. TEMITOPE LEYIMU

Motley Rice
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464

**For the Defendant,
Cardinal Health:**

MS. ENU MAINIGI

MS. JENNIFER WICHT

Williams Connolly
725 Twelfth Street NW
Washington, DC 20005

MS. SUZANNE SALGADO

725 Twelfth Street NW
Washington, DC 20005

MR. STEVEN R. RUBY

Carey Douglas Kessler & Ruby
901 Chase Tower
707 Virginia Street, East
Charleston, WV 25301

APPEARANCES (Continued):

**For the Defendant,
Cardinal Health:**

MS. ASHLEY W. HARDIN
MS. ISIA JASIEWICZ
Williams & Connolly
25 Twelfth Street, NW
Washington, DC 20005

APPEARANCES (Continued):

**For the Defendant,
McKesson:**

MR. TIMOTHY C. HESTER
MR. PAUL W. SCHMIDT
MS. LAURA M. FLAHIVE WU
MR. ANDREW STANNER
Covington & Burling
One City Center
850 Tenth Street NW
Washington, DC 20001

MR. JEFFREY M. WAKEFIELD
Flaherty Sensabaugh & Bonasso
P.O. Box 3843
Charleston, WV 25338-3843

APPEARANCES (Continued):

**For the Defendant,
AmerisourceBergen Drug Corporation:**

MS. SHANNON E. MCCLURE

MR. JOSEPH J. MAHADY

Reed Smith
Three Logan Square
Suite 3100
1717 Arch Street
Philadelphia, PA 19103

MS. GRETCHEN M. CALLAS

Jackson Kelly
P.O. Box 553
Charleston, WV 25322

APPEARANCES (Continued):

MR. ROBERT A. NICHOLAS

Reed Smith
Suite 3100
Three Logan Square
1717 Arch Street
Philadelphia, PA 19103

MS. ELIZABETH CAMPBELL

1300 Morris Drive
Chesterbrook, PA 19087

Court Reporter: Ayme Cochran, RMR, CRR
Court Reporter: Lisa A. Cook, RPR-RMR-CRR-FCRR

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1 PROCEEDINGS had before The Honorable David A. Faber,
2 Senior Status Judge, United States District Court, Southern
3 District of West Virginia, in Charleston, West Virginia, on
4 May 25, 2021, at 9:00 a.m., as follows:

5 THE COURT: I believe Mr. Rafferty passed the
6 witness at the conclusion of yesterday. So, we'll move on
7 to the cross examination of Mr. Oriente.

8 MR. SCHMIDT: May I take the podium, Your Honor?

9 THE COURT: Yes.

10 MR. SCHMIDT: Thank you.

11 THE COURT: Good morning, sir.

12 THE WITNESS: Good morning, Your Honor.

13 THE COURT: The Court reminds you you're still
14 under oath and you may take the witness stand.

15 THE WITNESS: All right. Thank you.

16 THE COURT: Thank you.

17 MR. SCHMIDT: May I proceed, Your Honor?

18 Thank you.

19 **CROSS EXAMINATION**

20 **BY MR. SCHMIDT:**

21 **Q.** Mr. Oriente, I'm going to pick up on some of the
22 questions that you were asked yesterday during the
23 examination you had with plaintiffs' counsel with Mr.
24 Rafferty. I want to start by just touching on some details
25 of your employment and your work at McKesson. First off,

1 can you tell us what is McKesson's mission as a distributor?

2 **A.** Yes. McKesson is a distributor of pharmaceuticals. We
3 receive product in from the manufacturers. We warehouse it,
4 store it. Orders come in to us from pharmacies. We fill
5 those orders and distribute them to the pharmacies.

6 **Q.** And from your perspective and your experience, is that
7 an important mission? Is that an important purpose?

8 **A.** Yes, it is.

9 **Q.** Tell me what you mean by that.

10 **A.** We are a distributor of medications for people. Some
11 are lifesaving drugs. Others are maintenance drugs that
12 people need in order to live day-to-day.

13 **Q.** How long is it that you've spent working at McKesson?

14 **A.** Since June of 2004.

15 **Q.** And what is it that has made you spend -- is that about
16 17 years?

17 **A.** Yes, coming up on it.

18 **Q.** Okay. What is it that's made you spend such a
19 substantial portion of your career at McKesson?

20 **A.** I -- when I interviewed with McKesson, many of the
21 people there had been there very long-term, which told me
22 something about the company. The company has what it calls
23 I CARE principles and its integrity, customer
24 accountability, respect and excellence and those were some
25 of the things that made me realize McKesson was a very good

1 company to go to work for.

2 **Q.** I want to do a couple of quick hit points and then dive
3 some more into your background and then into the programs at
4 McKesson. But just by way of general introduction, the
5 Court has heard about this concept of blocking orders. For
6 how long has McKesson been blocking orders that go above
7 thresholds?

8 **A.** McKesson has been systematically blocking orders since
9 2008. Any suspicious order in 2008 on was systematically
10 blocked. Prior to 2008, it would have been a manual process
11 by people in the distribution center at different levels
12 that could review orders.

13 **Q.** Separate from suspicious orders, does McKesson monitor
14 its customers for evidence of diversion, evidence that
15 something -- something wrong is going on?

16 **A.** Yes, we do.

17 **Q.** Has that monitoring been part of your job throughout
18 your time at McKesson?

19 **A.** Yes, it has been.

20 **Q.** In your position as Director of Regulatory Affairs,
21 have you taken action against pharmacies when you see reason
22 to do so?

23 **A.** Yes, I have.

24 **Q.** Other than in this case in your work, has anyone, DEA,
25 state government, expressed concern that you know of about

1 specific McKesson customers in Huntington and Cabell County?

2 **A.** Not that I'm aware of, no.

3 **Q.** All right. Let's go back to your experience and I'll
4 ask you a few more questions about your experiences. As I
5 understand it, there was a period of time when you were
6 Director of Operations at the distribution center; is that
7 correct?

8 **A.** Yes.

9 **Q.** What period of time was that?

10 **A.** That was 2004. June of 2004 through the end of 2007.

11 **Q.** So that we have it, what is a distribution center? Can
12 you explain what that is?

13 **A.** A distribution center is a large warehouse building
14 about the size of four football fields. There's conveyor
15 systems running throughout it. A lot of automation for
16 picking. There's also what's called pallet racking where
17 product is stored. And there's a cage and a vault for
18 storage of the controlled substances.

19 **Q.** Can you give us a sense of the range of products that
20 McKesson deals with that it has at its distribution centers?

21 **A.** Yes. It would have Rx products, such as antibacteria
22 drugs. It would have drugs for mental illness, have drugs
23 for psoriasis, blood pressure medicines, all that type.
24 Everything you'd see in a pharmacy behind the counter would
25 be in our warehouse.

1 **Q.** You mentioned the term Rx drugs. Could you just tell
2 us what that is?

3 **A.** Yes. They would be drugs that would require a
4 prescription from a prescriber in order to be dispensed.

5 **Q.** I'm not going to ask you for an exact number, but from
6 your work, do you have a sense of, if we look at all the --
7 all the medications McKesson has at a warehouse, at a
8 distribution center, how much of those are prescription
9 opioids?

10 **A.** Yes. I believe it's roughly about four percent only.

11 **Q.** I'd like to focus on that small percentage of
12 prescription opioids. In terms of physical storage at a
13 distribution center, are they stored differently than the
14 other prescription medications?

15 **A.** Yes, they would be.

16 **Q.** Can you tell us about that?

17 **A.** Yes. The Schedule II opioids would be stored in a
18 vault, a cement vault, reinforced with rebar and would have
19 a big safe door on it just like you'd see at a bank vault.

20 **Q.** You mentioned Schedule II. Is there a different method
21 for storing Schedule III controlled substances?

22 **A.** Yes. Schedule IIIs through Vs would be stored in a
23 cage, a locked cage environment.

24 **Q.** Does someone set rules for what that vault needs to be
25 like, or what the cage needs to be like, guiding the Section

1 IIs are in the vault and the Section -- the Schedule IIIs
2 are in the cage?

3 **A.** Yes.

4 **Q.** Who sets those rules?

5 **A.** Those rules and requirements are set by the DEA.

6 **Q.** And do you have an understanding as to whether those
7 rules are very general, very detailed?

8 **A.** They're very detailed.

9 **Q.** We talked about storage. Are there other surveillance
10 tools at a distribution center regarding controlled
11 substances?

12 **A.** Yes, there are.

13 **Q.** Could you describe those to us?

14 **A.** Yes. There are cameras throughout the cage and vault.
15 There are cameras throughout the facility overall and, for
16 the cage and vault, there is limited access to employees
17 with badge entry only.

18 **Q.** And what, as you understand it, is the purpose of
19 having all of those protective measures for prescription
20 opioids?

21 **A.** Yes. Those measures are in place because of the closed
22 loop distribution. By that, it goes from the manufacturer,
23 gets handed off to the distributor. The distributor takes
24 possession and then distributes or -- yeah, distributes that
25 to the pharmacy.

1 Q. Okay. How many of these distribution centers are there
2 around the United States?

3 A. I believe at this time there's 28.

4 Q. In order for them to have controlled substances, does
5 each individual distribution center need to be registered by
6 the DEA?

7 A. Yes. Each distribution center would have a
8 registration issued by the DEA.

9 Q. Do you know whether that registration is a lifetime
10 registration or whether it needs to be renewed?

11 A. It would need to be renewed.

12 Q. How often?

13 A. It's a yearly renewal.

14 Q. And from your perspective, do you understand why
15 there's a renewal process?

16 A. Yes, I do.

17 Q. What's that?

18 A. The DEA would review whether a registration should be
19 renewed. They have the ability to withdraw that renewal.

20 Q. From your experience, do they have the ability to visit
21 your distribution centers in the course of either
22 registering them initially or in the course of
23 re-registering them annually?

24 A. Yes. They can visit at any time they see fit.

25 Q. Do they always perform cyclical audits of your

1 distribution centers?

2 **A.** Yes. They do come in every -- within every two years
3 to do a cyclical audit.

4 **Q.** Do you have an experience with that that you could
5 describe for us just in terms of how that works?

6 **A.** Yes, both as the Director of Operations and as a
7 Regulatory Director. The DEA comes in once every two years
8 to review your processes, your policies and procedures.
9 They review and do inventory counts to make sure that your
10 inventory is accurate. They'll also look at what's called a
11 222 Form, which is used to fill out by the -- by the
12 pharmacy to order opioids and the DEA would come in and
13 check that you're storing those and filing those accurately.

14 **Q.** Okay. In the course of these cyclical audits or in the
15 course of registering or re-registering the facilities, does
16 the DEA have the ability to look at your policies, like --
17 something like the CSMP that we heard about yesterday?

18 **A.** Yes, they would.

19 **Q.** Do they have the ability to look at customer files?

20 **A.** Yes, they could.

21 **Q.** Do they have the ability to look at sales data or
22 transaction data?

23 **A.** Yes. They'd have full visibility.

24 **Q.** And from your experience, do they raise issues when
25 they see it during these audits or reviews?

1 **A.** Yes. They would note those.

2 **Q.** Is it meaningful to you if they have access during a
3 review and they don't raise issues regarding it?

4 **A.** Yes. That would -- that would happen. It would be a
5 good sign.

6 **Q.** Why is that?

7 **A.** During our audits, if they find no instances that they
8 bring to light, it means that we've had a good audit and
9 they agree with our processes.

10 **Q.** Okay. I've been talking about the DEA and their
11 registration process. Are there parallel licensing
12 requirements from individual states for your distribution
13 centers?

14 **A.** Yes, there are.

15 **Q.** We had some discussion yesterday about the Washington
16 Court House Distribution Center and the fact that that was
17 the principal distribution center for Huntington and Cabell
18 County. Can you tell us where it's located?

19 **A.** Yes. Washington Court House Distribution Center is in
20 Washington Court House, Ohio.

21 **Q.** Is it also licensed, to your knowledge, in West
22 Virginia?

23 **A.** Yes, it would be, to my knowledge.

24 **Q.** And why is it licensed in West Virginia if it's located
25 in Ohio?

1 **A.** In order to do business, controlled substances and Rx
2 drugs into the State of West Virginia, distribution centers
3 would need to be licensed in that state that they distribute
4 into.

5 **Q.** Is it the only McKesson distribution center that's
6 licensed by the State of West Virginia?

7 **A.** No, it is not.

8 **Q.** Why is it you have other distribution centers licensed
9 by the State of West Virginia if Washington Court House and
10 one or two other ones are the principal ones distributing
11 into West Virginia?

12 **A.** McKesson Distribution Centers have multiple state
13 licenses in order to distribute into multiple states if the
14 need arise.

15 **Q.** And why might the need arise?

16 **A.** There could be something that affects the operation of
17 one distribution center and, in order to have the ability
18 to, you know, avert that problem, whether it be electrical
19 or something, they would be able to ship from another
20 distribution center to meet that need.

21 **Q.** If you have more than one distribution center shipping
22 into West Virginia, does every single one need to be
23 licensed by the State of West Virginia?

24 **A.** Yes. Each one would need to be licensed.

25 **Q.** In your work at McKesson, have you had opportunity to

1 see individual distribution center licenses?

2 **A.** Yes, I have.

3 MR. SCHMIDT: May I approach, Your Honor?

4 THE COURT: Yes.

5 THE WITNESS: Thank you.

6 MR. SCHMIDT: Absolutely.

7 BY MR. SCHMIDT:

8 **Q.** Do you recognize this as a State of West Virginia
9 license for one of your distribution centers?

10 **A.** Yes, I do.

11 MR. SCHMIDT: Your Honor, we move in MCWV-21250.

12 THE COURT: Any objection?

13 MR. RAFFERTY: No objection, Your Honor.

14 THE COURT: It's admitted.

15 MR. SCHMIDT: Thank you.

16 Let's put that up on the screen if we could, please.

17 And apologies. Oh, I'm sorry.

18 MR. SCHMIDT: Thank you.

19 LAW CLERK: Sorry.

20 MR. SCHMIDT: No, my fault.

21 BY MR. SCHMIDT:

22 **Q.** Do you see the document on your screen? We're not
23 going to put it up on this big screen because I'm going to
24 use that in a minute, but it should be on the screen to your
25 right.

1 **A.** Yes, sir.

2 **Q.** And on the Court's screen. Do you see that document
3 that says State of West Virginia Board of Pharmacy
4 Wholesaler -- Wholesale Drug Distributor Permit, Controlled
5 Substances Permit, McKesson Corporation? Is this one of
6 those West Virginia licenses you were telling us about?

7 **A.** Yes, it would be.

8 **Q.** If you look further down, it's for a place in
9 Robbinsville, New Jersey. Do you know what distribution
10 center that is?

11 **A.** Yes. That goes by the name Tristate Distribution
12 Center.

13 **Q.** Okay. We picked this one as an illustration for a
14 reason. Do you have any affiliation with that distribution
15 center?

16 **A.** Yes. That was my home DC. That's where I have an
17 office.

18 **Q.** And if we look up above, we see some dates. It looks
19 like it was issued June 22nd, 2020 and it runs through
20 June 30th of 2021. Is this the current license for the
21 Tristate Distribution Center?

22 **A.** Yes, it is, and would be valid until the end of June of
23 this year.

24 **Q.** Okay.

25 MR. SCHMIDT: May I approach?

1 BY MR. SCHMIDT:

2 Q. And in the interest of time, what I have done is given
3 you a stack of licenses from the State of West Virginia
4 starting in 2014 forward with the exhibit number MCWV-2149.
5 Do you recognize these documents and have you had a chance
6 to review them before?

7 A. Yes, I have.

8 MR. SCHMIDT: We'd move this into evidence, Your
9 Honor.

10 MR. RAFFERTY: No objection, Your Honor.

11 THE COURT: It's admitted.

12 BY MR. SCHMIDT:

13 Q. Let's take just one example from this stack. If you
14 look at Page 149, please, are you able to tell what
15 distribution center this license corresponds to?

16 A. Yes. This license would correspond to the Washington
17 Court House Distribution Center in Ohio.

18 Q. And can you tell from the date above whether this is
19 the current license?

20 A. Yes. It would be, again, valid through the end of June
21 of this year.

22 Q. All right. I've been asking you so far about your
23 responsibilities when you were directly part of a
24 distribution center as a Director of Operations. I want to
25 ask about the role you stepped into and that you still hold

1 today now as a Director of Regulatory Affairs. Can you tell
2 us when you became a Director of Regulatory Affairs?

3 **A.** Yes. It would have been in early 2008.

4 **Q.** And, at a high level, can you tell us what that role as
5 a Director of Regulatory Affairs entails?

6 **A.** Yes. For the position that I took, it was a regional
7 position for the northeast. I was responsible to oversee
8 the controlled substance ordering and shipments for six
9 distribution centers on a daily basis. I would review
10 customer purchases.

11 **Q.** Okay. Why did you switch from being a Director of
12 Operations at a distribution center to being a Director of
13 Regulatory Affairs? What made you decide to make that shift
14 in your career?

15 **A.** As Director of Operations, part of my responsibility
16 was regulatory-related. Since I was responsible for the
17 entire building and operations, and I found that to be a
18 very rewarding, and interesting, satisfying part of the job,
19 and I also wanted to progress in my career and do something
20 on a more regional level than one distribution center.

21 **Q.** In your experience, has that role been an important
22 role, being a Director of Regulatory Affairs?

23 **A.** Yes, it has been.

24 **Q.** When you took that role, did you receive training from
25 McKesson?

1 **A.** Yes, I did.

2 **Q.** Have you received training on Regulatory Affairs issues
3 since?

4 **A.** Yes. The training is continuous.

5 **Q.** Has that included external training from diversion
6 investigation groups?

7 **A.** Yes, it has.

8 **Q.** All right. I want to shift gears now having gone
9 through your background and I would like to talk about
10 McKesson's role in the supply chain.

11 MR. SCHMIDT: And, if I may, Your Honor, may I
12 approach the board?

13 THE COURT: You may.

14 MR. SCHMIDT: Thank you.

15 BY MR. SCHMIDT:

16 **Q.** Start off by writing McKesson in apparently the
17 messiest handwriting possible. Where is it McKesson gets
18 the controlled substances that it distributes?

19 **A.** It gets them from manufacturers.

20 **Q.** Okay.

21 MR. ACKERMAN: Your Honor, just for the record,
22 I'm going to move around this way so that I can see the
23 board. I just didn't want the Court to be alarmed.

24 THE COURT: That's fine.

25 BY MR. SCHMIDT:

1 **Q.** Between manufacturers and a company like McKesson,
2 which is the entity that studies the drug and obtains
3 approval for the drug?

4 **A.** That would be under the manufacturer's responsibility.

5 **Q.** Which is the entity that makes the medication?

6 **A.** Again, the manufacturer.

7 **Q.** Which is the entity that provides warnings to doctors,
8 sometimes to patients regarding the medication?

9 **A.** That would be provided by the manufacturer.

10 **Q.** Are the products that McKesson obtains, whether
11 prescription opioids or otherwise, from manufacturers FDA
12 approved?

13 **A.** Yes, they would be.

14 **Q.** Is that meaningful that for the prescription
15 medications they're FDA approved?

16 **A.** Yes, it would be.

17 **Q.** All right. What about in terms of customers, can you
18 give us a sense of the customers that McKesson has?

19 **A.** Yes. McKesson would -- customers would move
20 pharmacies, as well as hospitals.

21 **Q.** In terms of supplying pharmacies and hospitals with
22 prescription medications, as you understand it, is that an
23 important function?

24 **A.** Yes, it is.

25 **Q.** Why is that?

1 **A.** Again, some of the medications that we deliver both to
2 hospitals and pharmacies are maintenance drugs for people to
3 live their daily lives. It's also used in hospitals for
4 surgeries and such. Some -- some of our shipments are life
5 critical.

6 **Q.** When you talk about -- and I'll ask you some more
7 questions about the diligence that you do into pharmacies
8 and hospitals and let me focus on pharmacies in particular.
9 Do you see a lot of similarity between their ordering
10 patterns? Do you have a wide range of variability?

11 **A.** There would be a wide range of variability.

12 **Q.** And why is that in your experience?

13 **A.** Pharmacies are different one from another. I know
14 there are, you know, average numbers, but there's really few
15 that are average. Some are larger. Some are smaller. Some
16 are located in cities. Others in rural areas. There's
17 multiple variabilities.

18 **Q.** Do you see variability even within pharmacies that
19 might be in the same community?

20 **A.** Yes, there could be.

21 **Q.** And why might that be?

22 **A.** Because of their location. One pharmacy may have a
23 medical building close by across the street that has
24 multiple physicians offices in it. Another could be located
25 close to a hospital or a medical center. So, depending on

1 where they're located, there would be that cause for
2 variability.

3 **Q.** Do you see variability in terms of the types of
4 products they order from you, the manufacturers that make
5 those products?

6 **A.** Yes, there would be.

7 **Q.** Do you have an understanding of whether when you ship a
8 prescription medicine, whether it's an opioid or something
9 else to a pharmacy, as to whether it ever leaves the
10 pharmacy shelf without there being a doctor writing a
11 prescription for an individual patient?

12 **A.** It should not. It's a requirement that there be a
13 prescription for a pharmacy to dispense.

14 **Q.** Do you have experience with whether pharmacies order
15 large quantities of medications just so they can have them
16 sit on their shelf?

17 **A.** No. They would not order product just to sit on the
18 shelf. It's -- it's space that they have, as well as, you
19 know, it's expirable. There are dates on the product. They
20 wouldn't want it just sitting on the shelf.

21 **Q.** Does that contribute to variability over time?

22 **A.** It would.

23 **Q.** For lack of a better term, is McKesson able to adopt a
24 one size fits all approach to every single one of its
25 pharmacy customers in terms of things like setting threshold

1 for all pharmacies?

2 **A.** No, not -- not really.

3 **Q.** Are you able to tell when you look at a pharmacy just
4 by their numbers whether there's potential diversion or not?

5 **A.** In my experience, no.

6 **Q.** Why is that?

7 **A.** Well, just because there is a large volume pharmacy
8 does not mean that diversion is taking place. And the
9 opposite spectrum is just because a pharmacy is ordering a
10 low amount of opioids doesn't mean that they're not doing
11 something with diversion.

12 **Q.** Okay. And is the same true in reverse?

13 **A.** Yes.

14 **Q.** I would like to ask you about one customer in
15 particular, one of your hospital customers. Are you aware
16 of whether McKesson provides VA facilities with prescription
17 opioids?

18 **A.** Yes. McKesson has a contract with the Veterans
19 Administration.

20 **Q.** And how do you know about that?

21 **A.** When I was first hired in Delran, I was responsible for
22 the operation there and I was -- you know, in the case of
23 Delran, we serviced several VA hospitals. And so, I would
24 have to have the staffing at the distribution center set
25 appropriately to meet that demand.

1 **Q.** Okay.

2 MR. SCHMIDT: If I may approach, Your Honor?

3 THE COURT: Yes.

4 MR. SCHMIDT: Sorry for these voluminous documents
5 that I hope to ask just a couple of questions about that are
6 important for the record.

7 THE WITNESS: Thank you.

8 MR. ACKERMAN: Your Honor, may I have a minute to
9 confer with my colleagues --

10 THE COURT: Yes.

11 MR. ACKERMAN: -- before we start this questioning
12 on this topic?

13 (Pause)

14 THE COURT: I feel like an umpire ready to break
15 up a conference at the mound.

16 MR. ACKERMAN: I feel like an umpire walking to
17 the mound, Your Honor.

18 BY MR. SCHMIDT:

19 **Q.** Mr. Oriente, do you see I've put in front of you a copy
20 of the VA contract marked MCWV-02074?

21 **A.** Yes, I do.

22 **Q.** Have you had the opportunity at a high level to review
23 this document before you came here today?

24 **A.** Yes, I have.

25 MR. SCHMIDT: We'd move this into evidence, Your

1 Honor.

2 MR. ACKERMAN: We have a relevance objection, Your
3 Honor.

4 THE COURT: Well, what's the relevance, Mr.
5 Schmidt?

6 MR. SCHMIDT: They're a customer in
7 Cabell-Huntington. They're our biggest customer. They're
8 76 percent of our market. If the plaintiffs --

9 THE COURT: I will admit it. Overrule the
10 objection and admit it.

11 MR. SCHMIDT: Thank you.

12 BY MR. SCHMIDT:

13 Q. Let's look at the top. Do you see it says Department
14 of Veterans Affairs at the top, December 31st, 2003?

15 A. Yes, it does.

16 Q. And it's sent to a Mr. Paul Julian. Do you see that?

17 A. Yes.

18 Q. Who is Mr. Julian?

19 A. Mr. Paul Julian was the President of McKesson at the
20 time.

21 Q. First line says congratulations. The government is an
22 entity of few words. And then, if we scroll down, they say
23 -- in the second paragraph, they specify the award period.
24 Do you see that in the second paragraph there for the base
25 period of April 1st, 2004 through March 31st, 2006 with

1 three two-year government renewal options. Do you see that?

2 **A.** Yes.

3 **Q.** Okay. And then, if we flip through to Page 3 of this
4 document, there's one of these government solicitation
5 contract order forms. Do you see that?

6 **A.** Yes.

7 **Q.** And you can see on the left issued by Department of
8 Veterans Affairs issued to McKesson Corporation. Do you see
9 that?

10 **A.** Yes, I do.

11 **Q.** Okay.

12 MR. SCHMIDT: May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MR. SCHMIDT:

15 **Q.** I'm giving you three exhibits together.

16 **A.** Thank you.

17 **Q.** And just while these are being passed out, do you see
18 that these are VA contracts labeled MCWV-2062, MCWV-918 and
19 MC-WV-917?

20 **A.** Yes, I do.

21 MR. SCHMIDT: We'd move these three documents into
22 evidence, Your Honor.

23 THE COURT: Any objection?

24 MR. ACKERMAN: State my objection for the record,
25 Your Honor, but I can guess your response.

1 THE COURT: Well, what's your objection?

2 MR. ACKERMAN: It's the same relevance objection,
3 Your Honor.

4 THE COURT: Your objection is overruled and
5 they're admitted, Mr. Ackerman.

6 BY MR. SCHMIDT:

7 Q. All right. And just very quickly, if we start with
8 2062, do you see that this -- and you go to the second page,
9 it says contract period at the top and do you see this is a
10 short-term contract, May 10th, 2012 to August 9th, 2012,
11 with an option for an additional 30 days?

12 A. Yes, I do.

13 Q. And if you look at the next document, MCWV-918, on the
14 cover, do you see that there's also a contract period? This
15 runs from August 10th, 2012 through August 9th, 2014 with
16 three two-year options?

17 A. Yes, I do.

18 Q. And last one, MCWV-917, go to -- I believe it's Page 7
19 and in that do you see that this contract period is the
20 August 9th, 2020 through August 8th, 2022 with three
21 two-year options?

22 A. Yes, I do.

23 MR. SCHMIDT: Your Honor, just to avoid documents
24 piling up, do you mind if I take some of these big stacks
25 that I'm not going to use further?

1 THE COURT: All right.

2 THE WITNESS: What do you want back?

3 MR. SCHMIDT: Anything you want to give me. Thank
4 you.

5 THE WITNESS: You're welcome.

6 MR. SCHMIDT: Thank you.

7 BY MR. SCHMIDT:

8 Q. All right. Let's go back to the board. Who is it in
9 the supply chain that makes a decision about whether an
10 individual patient can get access to a prescription
11 medicine, including prescription opioids?

12 A. That would be a prescriber.

13 Q. And I've drawn an arrow between the prescriber and the
14 pharmacy just in terms of a patient going to a pharmacy to
15 fill a prescription. When it comes to talking with
16 prescribers, talking with doctors about the medicines
17 they're prescribing, and which ones they should be
18 prescribing, is that something McKesson does?

19 A. No, we do not.

20 Q. Does McKesson interact directly with patients in terms
21 of talking with them about what medicines they should use?

22 A. No, McKesson does not.

23 Q. I'm going to ask you about -- I'm going to ask you
24 about DEA. Does DEA oversee every one of these entities?

25 A. Yes, they would.

1 **Q.** Do you have an understanding as to whether they
2 register every one of those entities?

3 **A.** Yes, they would.

4 **Q.** And from McKesson's perspective in this process, does
5 it matter that these other entities are all registered with
6 the DEA that is dealing with DEA registered entities?

7 **A.** Yes. It would definitely be a requirement. McKesson
8 won't ship to a hospital or a pharmacy that is not licensed
9 with a DEA registration.

10 **Q.** Why does that matter?

11 **A.** It's part of the requirement in the -- in the way that
12 McKesson operates in order to meet its responsibilities and
13 it also tells us that a pharmacy or a hospital has been
14 issued and is viewed by the DEA as being an acceptable
15 registrant.

16 **Q.** Do you have an understanding of whether, in addition to
17 registering all of these entities in the closed system, the
18 DEA actually has control over the amount of prescription
19 opioids in a given year that manufacturers can physically
20 make?

21 **A.** Yes, they would.

22 **Q.** What's your understanding of that ability?

23 **A.** The DEA sets what's called the manufacturing quota,
24 which is basically the amount that a manufacturer could
25 manufacture and make. They set it for each manufacturer.

1 And so, the DEA controls how much product can be made in a
2 year. It's a yearly quota.

3 **Q.** From your experience, does McKesson have any role in
4 that quota process?

5 **A.** No, we do not.

6 **Q.** I want to focus on when you started at McKesson and
7 then when you switched over to being a DRA up through, say,
8 2010, 2011, 2012. In that period of time, do you have an
9 awareness when it comes to prescription opioids as to
10 whether physicians were writing more or less prescriptions
11 over that time?

12 **A.** They were writing more prescriptions during those
13 years.

14 **Q.** Do you have an awareness as to whether, during that
15 time period, the DEA was keeping the quota flat, reducing
16 the quota, or increasing the quota?

17 **A.** The DEA was increasing the quota.

18 **Q.** So, I want to ask you about those two points. If
19 you're working at McKesson conducting diligence on
20 pharmacies, monitoring pharmacies, and you know that
21 prescribers are writing more prescriptions, you know that
22 the DEA is raising the quota, do you expect that to have an
23 effect on what pharmacies order?

24 **A.** Yes, I would.

25 **Q.** And tell us about that.

1 **A.** Pharmacies would need to order more in order to meet
2 the increase in prescriptions that they're seeing.

3 **Q.** And did you, in fact, see that in your practice?

4 **A.** Yes, I did. And that would affect, again, our workload
5 as TCRs, the threshold change requests, and our thresholds.
6 As prescribers wrote more, pharmacies ordered more, and they
7 would request that their thresholds be reviewed.

8 **Q.** Do you have an understanding as to whether when
9 pharmacies order more and ask for threshold change requests,
10 whether that is a function, or not, of doctors writing more
11 prescriptions?

12 MR. RAFFERTY: Objection, Your Honor, leading.

13 THE COURT: Well, I'm going to allow him to lead
14 him a little bit. This is technically cross examination, I
15 think.

16 Go ahead, Mr. Schmidt.

17 THE WITNESS: Could you repeat the question,
18 please?

19 MR. SCHMIDT: Of course.

20 BY MR. SCHMIDT:

21 **Q.** Do you know whether if pharmacies order more from
22 McKesson and ask for a threshold change from McKesson, ask
23 for higher thresholds, whether that is a function of
24 prescribers writing more prescriptions or not?

25 **A.** Yes, there would be.

1 **Q.** Now, just to round out the DEA, in your time with
2 McKesson, in your roles, have you had occasion to have
3 interactions with the DEA on issues relating to prescription
4 opioids?

5 **A.** Yes, I have.

6 **Q.** Has it been important for you to try to meet the DEA's
7 expectations regarding prescription opioids?

8 **A.** Yes, absolutely.

9 **Q.** Has it been important for you to try to work
10 cooperatively with the DEA to meet their expectations?

11 **A.** Yes, it has.

12 **Q.** Based on your experience, have there been times when
13 the DEA guidance to McKesson has changed in terms of what
14 their expectations are and what you understand they want you
15 to be doing?

16 **A.** Yes, there was.

17 **Q.** Has it always been clear what their guidance is?

18 **A.** Not always.

19 **Q.** Can you give us a sense of that?

20 **A.** Yes. There were, I think, in '6 and '7, those -- they
21 refer to them as the Rannazzisi letters where the guidance
22 changed as to what was expected of the wholesalers.

23 **Q.** When you say '6 and '7, do you mean 2006 and 2007?

24 **A.** Yes, sir.

25 **Q.** As that guidance has changed over time, has McKesson

1 worked to try to meet that guidance, meet that direction?

2 **A.** Yes. Our program has evolved.

3 **Q.** I'd like to talk now about your programs and that point
4 you just mentioned, how it's evolved over time.

5 MR. SCHMIDT: And, if I could, I'll go back to the
6 board, Your Honor.

7 THE COURT: Yes.

8 MR. SCHMIDT: Thank you.

9 BY MR. SCHMIDT:

10 **Q.** I want to divide this, just for sake of ease, into
11 three time periods. So, I'd like to ask you, if I could,
12 what happened before 2008? What happened between 2008 and
13 2013? And what's happened since 2013? Do you have
14 familiarity of McKesson's policies at all at all three of
15 those time periods?

16 **A.** Yes, I do.

17 **Q.** All right. Let's start with before 2008. And before I
18 get into each of these time periods, I want to ask you about
19 something you've heard a lot about called ARCOS. Are you
20 familiar, Mr. Oriente, with the DEA's ARCOS database?

21 **A.** Yes, I am.

22 **Q.** Could you give us your understanding of what the ARCOS
23 database contains at least as it relates to McKesson?

24 **A.** Yes. It would be all shipments of controlled
25 substances, IIs through Vs, to specific registrants on

1 specific dates and specific amounts.

2 **Q.** Did McKesson provide that information to the DEA?

3 **A.** Yes, it did.

4 **Q.** Would it include information on the individual
5 pharmacies being shipped to?

6 **A.** Yes, it would.

7 **Q.** Would it include the dates of shipments?

8 **A.** Yes, it would.

9 **Q.** Would it include the volume of shipments?

10 **A.** Yes, it would.

11 **Q.** Would it include all orders shipped?

12 **A.** All controlled orders shipped, yes.

13 **Q.** Fair. And was that ARCOS Report a constant throughout
14 each of these three time periods?

15 **A.** Yes, it has been.

16 **Q.** In your role as Director of Regulatory Affairs, I take
17 it you can access information of the type that McKesson was
18 submitting to the ARCOS database, but could you access the
19 ARCOS data that other distributors were submitting?

20 **A.** No. That was not available.

21 **Q.** Do you have an understanding as to who did have access
22 to that information?

23 **A.** Only the DEA.

24 **Q.** Were there occasions you're aware of when distributors
25 like McKesson tried to get access to that ARCOS data?

1 **A.** I believe there were requests made, yes.

2 **Q.** Until very recently, was that ever granted, to your
3 knowledge?

4 **A.** Not until recent.

5 **Q.** And what happened recently?

6 **A.** I believe that we got availability to ARCOS in 2019, I
7 believe it was.

8 **Q.** And do you know how that availability came about?

9 **A.** Yes. An act of Congress.

10 **Q.** Has it been helpful to have access to that data since
11 that time?

12 **A.** Yes. It's one more tool in the toolbox for us to
13 review customers.

14 **Q.** Would it have been useful to have that information,
15 that access, before?

16 **A.** Yes, it would have.

17 **Q.** Why is that?

18 **A.** It would have given us a full picture of the purchases
19 by the pharmacy registrant. Prior to having access to that
20 information, McKesson could only see what McKesson sold to
21 that customer.

22 **Q.** Would it have been helpful to have that earlier in
23 terms of your role in conducting diligence and trying to
24 spot diversion where you could?

25 **A.** Yes, it would have. It's one of the things we use

1 today on a daily basis.

2 MR. SCHMIDT: May I approach again, Your Honor?

3 THE COURT: Yes.

4 MR. SCHMIDT: I have a very helpful note to me on
5 this document that this is the last big document we'll be
6 passing out.

7 THE COURT: Okay.

8 THE WITNESS: Thank you.

9 MR. SCHMIDT: I hope I can live up to that
10 representation. I trust I'll have the wrath of all
11 concerned if I don't.

12 BY MR. SCHMIDT:

13 **Q.** Do you recognize this document that I've put in front
14 of you, which says Drug Operations Manual Section 55 DEA
15 Compliance, and has the exhibit number MCWV-451?

16 **A.** Yes, I do.

17 **Q.** What is Section 55 of the Drug Operations Manual at
18 McKesson or what was it?

19 **A.** Yes. This is McKesson's Operating Manual for the
20 storage and shipments of controlled substances.

21 **Q.** To orient us, is this a precursor to the CSMP that we
22 were talking about the other day? Did it come before it?

23 **A.** Yes, it did.

24 MR. SCHMIDT: Your Honor, we move Exhibit MCWV-451
25 into evidence.

1 MR. RAFFERTY: No objection, Your Honor.

2 MR. SCHMIDT: Thank you.

3 THE COURT: It's admitted.

4 BY MR. SCHMIDT:

5 Q. Let's put that up on the screen. And if we could go to
6 Page 2, do you see that the date of this is January 15th,
7 1997?

8 A. Yes, I do.

9 Q. Until this was replaced by the CSMP, was this
10 periodically revised as circumstances warranted?

11 A. Yes. It would have been updated as required.

12 Q. I believe this version covers the relevant time period
13 in terms of the points I'm going to ask you about, so I'm
14 only going to show you this version of the manual from
15 before 2008.

16 Let's start by going to Page 14, if we could. Do you
17 see at the top of Page 14 it's got a header that says Drug
18 Operations Manual Section 55. And then it's got the date,
19 January '97, and below that, it says Federal Regulatory
20 Requirements General. Do you see that?

21 A. Yes.

22 Q. And if we look at that first paragraph under General,
23 there's a sentence that's been underlined for emphasis. I
24 want to focus on that sentence. It is extremely important
25 that McKesson employees fully comply with the regulations

1 and the following guidelines. Did I read that correctly?

2 **A.** Yes, you did.

3 **Q.** Is that something you have taken seriously in your work
4 at McKesson?

5 **A.** Yes, I have.

6 **Q.** Let's go ahead to Page 16, please, and if we look
7 halfway down Page 16, there's a heading, C. Do you see that
8 heading?

9 **A.** Yes.

10 **Q.** And it says Automated Reports and Consolidated Order
11 System, ARCOS. Do you have an understanding as to whether
12 that's referring to this ARCOS reporting we were just
13 talking about?

14 **A.** Yes. That's what it is.

15 **Q.** And if you just look, it goes on for sometime to talk
16 about the ARCOS reporting obligations. I want to skip ahead
17 to the next section or to another section. Could we go to
18 Page 46, please? Do you see there's a heading --

19 MR. RAFFERTY: I'm sorry. I'm sorry, Mr. Schmidt.
20 I didn't mean to interrupt. Where were you on the last one?
21 I'm a little lost.

22 MR. SCHMIDT: I was on Page 16.

23 And, just for the Court's reference, too, there's a --
24 in the lower left corner is the pagination that I'm using
25 with the exhibit number and then the page number. Sorry for

1 any confusion on that.

2 BY MR. SCHMIDT:

3 Q. So, we're on Page 46. And do you see the heading at
4 the top, Suspicious Orders, Detecting Suspicious Orders, and
5 then Definition and Responsibility?

6 A. Yes.

7 Q. And if you look in the second paragraph, there's a
8 quotation. Do you know where that quoted definition comes
9 from?

10 A. Yes, the DEA's definition of suspicious order.

11 Q. And does that comport with your understanding of what
12 the DEA tells you constitutes a suspicious order?

13 A. Yes, it is.

14 Q. All right. I'm going to come back to that in a minute,
15 but I want to ask you a separate question about that. Is
16 every single order that your company identifies as a
17 suspicious order also reported as part of the dataset that
18 goes in through ARCOS?

19 A. Yes, it would be, if it was shipped.

20 Q. So, whether it's reported separately as suspicious or
21 not, does it get reported as part of the larger ARCOS
22 dataset?

23 A. Yes. It would be included in the ARCOS numbers.

24 Q. Would I be correct then in understanding that if
25 there's a Suspicious Order Report, that's actually two

1 reports, one through ARCOS, one is the separate suspicious
2 order flagging?

3 **A.** That is correct.

4 **Q.** Let's go to Page 47, please, and in the middle of the
5 page -- or, actually, towards the bottom half of the page --
6 there's reference to something called Daily Controlled
7 Substance Suspicious Order Warning Report and then there's a
8 number there I'm going to ask you about in a moment. Do you
9 see that?

10 **A.** Yes, I do.

11 **Q.** Okay. So, in this pre-2008 time period, was there a
12 Suspicious Order Report?

13 **A.** Yes, there was.

14 **Q.** When it says daily, can you comment on whether it was
15 frequent or infrequent?

16 **A.** Daily would have been frequent.

17 **Q.** Immediately after that reference to Daily Controlled
18 Suspicious Order Warning Report, it has some letters and
19 some numbers and it says DU45L500. Do you know what a DU45
20 is?

21 **A.** Yes, I do.

22 **Q.** What does that mean?

23 **A.** It's McKesson's number. It was referred to as the DU45
24 and that report listed all suspicious orders identified from
25 the customers' purchasing patterns.

1 **Q.** And do you know roughly what period of time it was that
2 McKesson used those DU45s and sent those in to DEA as means
3 of reporting suspicious orders?

4 **A.** Yes. I believe it was up to about 2009.

5 **Q.** Now, sitting here today, of course, we are 12, 15,
6 20 years after these DU45s would have been reported. Do you
7 know of any policy at McKesson that DU45s had to be kept
8 over a 10- 15-, 20-year period every time they were
9 reported?

10 **A.** No. The retention period would have been two years.

11 **Q.** Do you know where the reports were coming out of for
12 the DU45s?

13 **A.** When you say coming out of, do you mean --

14 **Q.** Physically?

15 **A.** Printed off?

16 **Q.** Geographically?

17 **A.** At each distribution center.

18 **Q.** At each distribution center? If we look at a
19 distribution center and do or do not see DU45s -- let me
20 rephrase my question. If we look at a distribution center
21 and don't see DU45s from a certain time period, can you tell
22 from that fact that there were no DU45s reported?

23 **A.** No, you could not.

24 **Q.** Why is that?

25 **A.** The retention period was to keep them for two years

1 only.

2 **Q.** Okay. Let's look further down the page. Could we look
3 further down the page, please? Do you see at the bottom of
4 the page there's reference to -- and I'm looking in the
5 parenthetical. Do you see where it's got triggers for
6 suspicious order reporting using these DU45s and it says
7 three times monthly average for Schedules II and III, eight
8 times monthly average for Schedules IIIN through V? Do you
9 see that?

10 **A.** Yes, I do.

11 **Q.** Were those monthly numbers the basis you used for
12 reporting these DU45s?

13 **A.** Yes. That would have been the criteria to identify
14 suspicious orders at that time.

15 **Q.** Now, I want to pick up on a question the Court had
16 earlier. Do you know why you would look on a monthly basis,
17 as opposed to doing some kind of order-by-order evaluation,
18 in terms of trying to flag suspicious orders?

19 **A.** Yes.

20 **Q.** Why is that?

21 **A.** The pharmacy ordering, there was variability on a daily
22 and even a weekly basis. So, to measure a pharmacy on a
23 monthly basis was the best way to determine, you know,
24 purchasing variability that would, you know, identify
25 suspicious orders.

1 Q. Given that variability, do you have a better sense of
2 what's suspicious looking at monthly data or looking at each
3 individual order?

4 A. It would have been on a monthly basis.

5 Q. Let's go to Page 48, please, and towards the bottom of
6 the page in the second paragraph under Heading B, there's
7 reference again to these -- at the end of that to these
8 Daily Controlled Substance Suspicious Order Warning Reports
9 and then I want to focus your attention, if I could, on the
10 language that's now highlighted. This report can be faxed
11 to your local DEA District Office before the order is
12 shipped. Do you see that language?

13 A. Yes, I do.

14 Q. Now, two questions about that. One, is that the type
15 of daily reporting that we've been talking about?

16 A. Yes, it is.

17 Q. And two, when it says before the order is shipped, with
18 these orders that you were reporting, were you shipping them
19 or were you blocking them?

20 A. At this time, we were shipping them.

21 Q. Okay. Is there a reason why you were shipping them as
22 you were reporting them?

23 A. Yes. The requirement at this time was to report
24 orders. It was not necessarily to block orders.

25 MR. ACKERMAN: Objection, Your Honor. The witness

1 is stating a legal conclusion.

2 MR. SCHMIDT: I think the witness was repeatedly

3 --

4 THE COURT: Overruled.

5 MR. SCHMIDT: Thank you.

6 BY MR. SCHMIDT:

7 Q. Do you have an understanding from your work if there's
8 a potential harm that could arise from not shipping orders
9 that trigger some kind of threshold?

10 A. I'm sorry. Could you rephrase that question?

11 Q. Sure. Is there any potential downside if you block
12 orders that go over a threshold? Is there any kind of harm
13 that can arise because of it?

14 A. Okay, now I understand. Yes, there is.

15 Q. And tell us what that is.

16 A. Yes. Necessary medications, again, some lifesaving,
17 you know, necessary medications would have been prevented
18 from going to pharmacies.

19 Q. Okay. I want to go back to that definition that
20 appears on Page 46 of suspicious orders.

21 A. Yes.

22 Q. And it talks about orders of unusual size, deviating
23 substantially from a normal pattern, orders of unusual
24 frequency. Is that your understanding of what constitutes a
25 suspicious order?

1 **A.** Yes, it is.

2 **Q.** You said yesterday that there was a difference between
3 something that might meet this definition, might have
4 unusual size, and something that is likely to be diverted.
5 Did I hear you correctly yesterday?

6 **A.** Yes. I said that.

7 **Q.** And why is that different?

8 **A.** Again, with the variability and ordering of pharmacies,
9 they may place an order that could be larger than they
10 previously placed, which would come under the size. Their
11 normal pattern may have changed. Perhaps they're ordering
12 once a week instead of daily. And unusual frequency would
13 fall into that daily versus weekly. So, that would be the
14 definition of a suspicious order. It doesn't necessarily
15 mean that that suspicious order is going to be diverted.

16 **Q.** Can you have orders that are of unusual size, pattern
17 or frequency that are legitimate?

18 **A.** Yes.

19 **Q.** Can you give us an example of how that might happen?

20 **A.** Yes. At times, the PIC, which is P-I-C, Pharmacist in
21 Charge, perhaps he does the ordering at a pharmacy and he
22 may be going on vacation next week. So, the order -- the
23 pharmacist is ordering a two-week supply this week to cover
24 the period he won't be at that pharmacy.

25 **Q.** Would you, in your experience, see orders of unusual

1 size, pattern or frequency because of developments in the
2 community, a pharmacy closing, a Hospice center opening?

3 **A.** Yes, that would occur.

4 **Q.** Now, going back to that distinction between a
5 suspicious order and orders that are likely to be diverted,
6 in this time period -- and I think you touched on this right
7 in your opening comments. In this time period, if you saw
8 an order that you believed was likely to be diverted, what
9 would you do with that?

10 **A.** That would be a manual block.

11 **Q.** All right. So, with a great deal of effort, I've
12 written blocked if likely diverted. Is that what you were
13 doing at this point in time?

14 **A.** Yes, sir.

15 **Q.** Now, just sticking with the definition of suspicious
16 orders that we have on the board, unusual size, pattern,
17 frequency, I asked you earlier about how specific the
18 regulations were when it came to the physical security. Do
19 you remember that?

20 **A.** Yes, sir.

21 **Q.** Do you have a sense from your experience as to the
22 level of specificity as to this definition?

23 **A.** It was no further defined than size, pattern and
24 frequency.

25 **Q.** Was that challenging at times in terms of identifying

1 suspicious orders?

2 **A.** Yes, it was.

3 **Q.** Can you tell us about that?

4 **A.** Yes. Again, with the purchasing variability of
5 pharmacies, size, pattern and frequency were experienced on
6 a daily basis.

7 **Q.** Okay. I asked you earlier about that period of time
8 through the beginning of your tenure and into your tenure
9 where prescribers were writing more prescriptions; do you
10 remember that?

11 **A.** Yes, I do.

12 **Q.** If prescriber levels, prescribing, is regularly going
13 up, does that make it challenging to figure out if something
14 is an unusual size, an unusual pattern, an unusual
15 frequency?

16 **A.** Yes. That would be a contributing factor in trying to
17 identify why.

18 **Q.** And why is that?

19 **A.** Again, as prescribers wrote more, the volume at a
20 pharmacy increased. The pharmacies would purchase more.
21 So, it would constantly be changing on an upward scale and
22 it would constantly be a different size, pattern and
23 frequency.

24 **Q.** Okay. Let's look at the bottom three paragraphs of
25 this page and you'll see that there's a quotation in the

1 middle paragraph. Do you see that quotation?

2 **A.** Yes, I do.

3 **Q.** I'm not going to ask you to vouch for the truth of that
4 quotation because it doesn't come from you. What I am going
5 to ask you about is your understanding of that quotation.

6 So, let me start with the first paragraph. Do you see
7 it says please note the following extract of a letter from
8 Mr. Gene Haislip, Director, DEA Office of Compliance and
9 Regulatory Affairs dated November 10th, 1980? Do you see
10 that language?

11 **A.** Yes. That's what's written here.

12 **Q.** And then there's a quotation; do you see that?

13 **A.** Yes, I do.

14 **Q.** And do you understand that quotation to come from this
15 Mr. Haislip at the DEA Office of Compliance and Regulatory
16 Affairs?

17 **A.** I would interpret that off of this document, yes.

18 **Q.** Quotation states I would like to state that these
19 guidelines as presented appear to be appropriate for
20 implementation and would serve as effective instrument in
21 accomplishing the requirements set forth in Title 21, Code
22 of Federal Regulations, Section 1301.74. Do you see that
23 language?

24 **A.** Yes, I do.

25 **Q.** And do you have an understanding as to whether there's

1 any relationship between 1301.74 and the suspicious order
2 obligation?

3 **A.** Yes, there is.

4 **Q.** And, in fact, if we zoom out of this image and just
5 look at the full page, do you see that this appears in the
6 portion of Section 55 that relates to suspicious orders and
7 detecting suspicious orders?

8 **A.** Yes. It's noted there.

9 **Q.** Okay. Can we go back to that, those three paragraphs,
10 please? Now, I want to look at the last paragraph which is,
11 again, from McKesson. It states because these guidelines
12 have been accepted by DEA, compliance with them is mandatory
13 for all McKesson Drug Distribution Centers. Do you see
14 that?

15 **A.** Yes, I do.

16 **Q.** Did you have an understanding at this point in time
17 that your policies were based on DEA approved guidelines?

18 **A.** Yes. That's my understanding.

19 **Q.** And would this manual, this Section 55, be available to
20 DEA agents anytime they came to do their cyclical audits,
21 anytime they came to do a registration or re-registration?

22 **A.** Yes. It would have been available.

23 **Q.** Would they have the chance to comment on the frequency
24 of your suspicious order reporting, the fact that you were
25 shipping orders, you were reporting suspicious, the fact

1 that you were blocking if likely diverted?

2 **A.** Yes.

3 MR. ACKERMAN: Your Honor, I just want to note for
4 the record that the plaintiffs have a motion in limine with
5 respect to references to DEA endorsing defendant sums,
6 policies. I don't think Mr. Schmidt has gone there, but I
7 want to make sure that -- I would be remiss if I didn't note
8 that that motion was still pending. It's Docket 1353.

9 MR. SCHMIDT: I think that's well taken because I
10 think I did go there.

11 BY MR. SCHMIDT:

12 **Q.** Let's go to Exhibit P-33, which you were shown
13 yesterday. Do you recognize this as a letter dated
14 September 27th -- I think we lost it. Do you still have it
15 on your screens?

16 **A.** No.

17 **Q.** I think we lost our feed for a second. I don't know if
18 it's on my end or -- oh, it's back.

19 Do you see that this was a letter that you were shown
20 yesterday dated September 27, 2006, U. S. Department of
21 Justice Drug Enforcement Administration, and if we scroll to
22 the last page, it's from Joseph Rannazzisi?

23 **A.** Yes, I do.

24 **Q.** I want to show you some language from this letter that
25 we didn't have a chance to look at yesterday. Can we go to

1 the first page, please, to the second paragraph?

2 MR. RAFFERTY: Your Honor, I'm going to object to
3 the commentary. The entire document was put in. To imply
4 that we did not show him a portion of it is inappropriate.

5 MR. SCHMIDT: I think I just said we didn't see it
6 yesterday.

7 THE COURT: Well, overruled. I don't see any
8 problem with that. Go ahead.

9 MR. SCHMIDT: Thank you, Your Honor.

10 THE COURT: It's already in.

11 BY MR. SCHMIDT:

12 Q. Let's look at -- I'm sorry. Let's look at the second
13 page, please. And in the second paragraph, I want to look
14 at just that first sentence. DEA recognizes that the
15 overwhelming majority of registered distributors act
16 lawfully and take appropriate measures to prevent diversion.
17 Did I read that correctly?

18 A. Yes, you did.

19 Q. That sentence from the DEA in the middle of 2006, was
20 that consistent or inconsistent with your understanding of
21 the DEA's views on your programs at this point in time?

22 A. It was consistent with my views that we were meeting
23 the requirements.

24 Q. In this time period with this letter and in the year or
25 two leading up to 2008, did the DEA's guidance start to

1 change?

2 **A.** Yes, it did.

3 **Q.** Let's look at another example of that. Could we show
4 P-34, which is the second letter from Mr. Rannazzisi that
5 you were shown? Now, we're all the way up to the end of
6 December, December 27, 2007. So, a year and a half -- a
7 little less than a year and a half later. Do you recall
8 being shown this letter?

9 **A.** Yes, I am.

10 **Q.** Let's look at the second paragraph, please, and I want
11 to ask you about the end of that second paragraph. It says
12 -- actually, I'll go back to the sentence before.
13 Accordingly, DEA does not approve or otherwise endorse any
14 specific system for reporting suspicious orders.

15 Let me then read you the next sentence. Past
16 communications with DEA, whether implicit or explicit, that
17 could be construed as approval of a particular system for
18 reporting suspicious orders, should no longer be taken to
19 mean that DEA approves a specific system. Did I read that
20 correctly?

21 **A.** Yes, you did.

22 **Q.** So, if we think back to that manual with the language
23 from the DEA and the statement from McKesson these
24 guidelines have to be followed because they've been endorsed
25 by the DEA, did you understand in this sentence that you

1 could no longer rely on those guidelines and that
2 endorsement?

3 **A.** That was my understanding.

4 **Q.** Did you understand from this statement that whatever
5 we've said before that could be construed as approval of a
6 particular system, that should no longer be taken to mean
7 that the DEA approves of a specific system? Did you
8 understand that the DEA was changing its standards?

9 **A.** Yes. It was changing its guidance to us, yes.

10 **Q.** Did McKesson change its processes in response?

11 **A.** Yes, it did.

12 **Q.** All right. Let me ask you about that, if I may. We
13 talked about McKesson shipping in this pre-2008 period
14 orders it was reporting as suspicious. Starting in 2008,
15 did McKesson start blocking orders that exceeded thresholds?

16 **A.** Yes. It started blocking all -- excuse me -- started
17 blocking all orders that exceeded threshold.

18 **Q.** And just to be clear, did that involve continuing to
19 block orders if they are likely to be diverted?

20 **A.** Yes, it did.

21 **Q.** Did you do that because that regulation we were looking
22 at on suspicious orders changed or did you do that because
23 guidance from DEA changed?

24 **A.** I believe it was because of the guidance change.

25 **Q.** Okay. Let's look at the rest of your program, the

1 suspicious order part of your program. Did you receive
2 feedback from the DEA about whether you should report more
3 or less in this time period?

4 **A.** The feedback was to report less.

5 **Q.** And did you, in fact, report less?

6 **A.** Yes, we did.

7 **Q.** Would it be accurate if I said instead of frequent
8 suspicious order reporting in the pre-2008 period,
9 infrequent suspicious order reporting in this period?

10 **A.** Yes. Yes.

11 **Q.** And I want to detail for the Court how that worked, but
12 first, let me just ask you, did you have an understanding as
13 to why the DEA wanted fewer Suspicious Order Reports than
14 these daily DU45s you'd been providing?

15 **A.** Yes. They were getting these large monthly reports
16 similar to the stack that you gave me earlier and they did
17 not want to get that much paperwork any longer.

18 **Q.** Did you receive that feedback directly?

19 **A.** I didn't catch the last word.

20 **Q.** I'm sorry. Was that feedback you directly received?

21 **A.** Yes, it was.

22 MR. SCHMIDT: May I approach, Your Honor?

23 THE COURT: Yes.

24 THE WITNESS: Thank you.

25 MR. SCHMIDT: Thank you.

1 BY MR. SCHMIDT:

2 Q. I've handed you just for illustrative purposes a
3 document I've marked as MCWV-592. Do you recognize this as
4 an e-mail that you wrote in 2008?

5 A. Yes, it is.

6 MR. SCHMIDT: We'd move this into evidence.

7 MR. RAFFERTY: No objection, Your Honor.

8 THE COURT: It's admitted.

9 MR. SCHMIDT: Thank you.

10 BY MR. SCHMIDT:

11 Q. Let's look at the top of the e-mail. It's from Michael
12 Oriente, you, to Bruce Russell and Don Walker. Just to
13 refresh all of us, who was Don Walker? What was your
14 relation to him?

15 A. Don Walker was the Senior Vice President over
16 Regulatory.

17 Q. Was he your boss?

18 A. Yes, he was.

19 Q. For lack of a better term?

20 A. Yeah.

21 Q. You write in October, 2008, the back end of this time,
22 back in the early part of this time period, Buffalo has
23 received a verbal request from the local DEA Office not to
24 receive the monthly reports, just their copy of the 222
25 Forms. Could you tell us what you were saying there?

1 **A.** Yes.

2 **Q.** There is a bit of jargon in there, a bit of shorthand.

3 **A.** Yes. The -- as I said, the monthly report was a large
4 report because it listed all shipments and, in a month,
5 there would have been quite a few pages to this report. The
6 DEA no longer wanted to receive that report. They only
7 wanted what was the 222 Forms, which are the forms a
8 pharmacy fills out, sends to McKesson, McKesson retains one
9 copy. These forms are issued by the DEA. They have a
10 serial number on every form. And then, one copy goes to DEA
11 and the distributor needs to retain a copy.

12 **Q.** So, let me be sure I understand. Did you understand
13 from this that they still wanted your overall data?

14 **A.** Yes. They wanted the 222 Forms. They did not want the
15 monthly report of suspicious orders.

16 **Q.** Got it. Okay. I want to turn to how you implemented
17 these practices of less frequent suspicious order reporting
18 and blocking in your policies, but before I do, when you
19 were doing this, did you understand that's what the DEA
20 wanted from you?

21 **A.** Yes. That was my understanding, that we had shown them
22 the program, and they accepted it.

23 **Q.** We heard yesterday about the Controlled Substance
24 Monitoring Program, the CSMP. Did you start using that
25 program in this time period?

1 **A.** Yes. It would have started in early 2008.

2 **Q.** Do you still have a CSMP in place today?

3 **A.** Yes. CSMP, Controlled Substance Monitoring Program, is
4 still in place today.

5 **Q.** Has it evolved over time?

6 **A.** Yes, continuously.

7 **Q.** Why is that?

8 **A.** As the marketplace changes, as any new patterns of
9 diversion arise, we change our monitoring program to take
10 those into account.

11 **Q.** We heard yesterday that for a period of time there was
12 a program that overlapped with Section 55 called the LDMP;
13 Do you remember that?

14 **A.** Yes.

15 **Q.** Can you tell us what period of time that program was in
16 place for?

17 **A.** Yes. LDMP was in place the end of 2007. I don't
18 remember the exact months. I believe the program lasted
19 about 11 months overall. And it was -- LDMP stood for
20 Lifestyle Drug Monitoring Program.

21 **Q.** Was it an immediate precursor to the CSMP?

22 **A.** Yes. It would have been a precursor.

23 **Q.** And you told us what it stood for. The first two
24 letters stand for lifestyle drug. Do you know where that
25 term lifestyle drug came from?

1 **A.** Yes. I believe it was identified by the DEA.

2 **Q.** All right. I'd like to focus on the CSMP.

3 MR. SCHMIDT: May I approach, Your Honor?

4 THE COURT: You may.

5 THE WITNESS: Thank you.

6 MR. SCHMIDT: I apologize. This might be the same
7 version you introduced. I don't know if it is. But just
8 because we've been tracking this one, Your Honor, I'll
9 separately move MCWV-381 into evidence.

10 MR. RAFFERTY: No objection, Your Honor.

11 THE COURT: It's admitted.

12 BY MR. SCHMIDT:

13 **Q.** Okay. Let's go ahead and put that up on the screen,
14 please. Do you see at the top it says Controlled Substance
15 Monitoring Program?

16 **A.** Yes, I do.

17 **Q.** And if we go to the final page, I think it's Page 17,
18 do you see there various -- bottom half of the page, various
19 revision dates from February, 2008 up until June, 2008? Do
20 you see that?

21 **A.** Yes, I do.

22 **Q.** Do you understand this to be the first version of your
23 CSMP that was used at McKesson?

24 **A.** Yes, it would be.

25 **Q.** All right. Let's look for a few minutes at how this

1 policy works and let's go to the first page of the policy,
2 please. If we look at the left-hand side near the top, it
3 says purpose.

4 MR. SCHMIDT: Can we just pull up those bullets?
5 Thank you.

6 BY MR. SCHMIDT:

7 Q. It says the purpose of this process is to and it lists
8 a number of bullet points. Do you see that?

9 A. Yes, I do.

10 Q. The first one is proactively review the customers'
11 orders and purchases for all controlled substances in order
12 to detect and prevent diversion. Do you see that language?

13 A. Yes, I do.

14 Q. Could you explain to us your understanding what that
15 means?

16 A. Yes. This program would permit the regulatory people
17 to observe and review customer orders, as well as shipments
18 to them, in order to detect and prevent diversion.

19 Q. And is that part of what you were doing in your work at
20 McKesson, trying to implement that bullet?

21 A. Yes. That was my daily job.

22 Q. Let's look at the next bullet, set and maintain
23 customers' thresholds for all controlled substances. Do you
24 see that?

25 A. Yes.

1 **Q.** We spent a lot of time yesterday talking about
2 thresholds, so I want to ask you some questions about that.
3 Just to re-orient us, can you tell us what a threshold is
4 under this policy?

5 **A.** Yes. It would be a monthly maximum amount within a
6 base code that a customer could order. It would encompass
7 all strengths of that drug.

8 **Q.** And what happened if a customer went over that amount,
9 if they tried to order more than their threshold?

10 **A.** Yeah. They could not go over that amount. They could
11 go up to that amount. If they attempted to go above that
12 amount, the order was automatically systematically blocked
13 and would -- would be, you know, not shipped.

14 **Q.** If it was blocked, could it be released later or was
15 that order blocked for all time and they would have to
16 reorder?

17 **A.** It was blocked for all time. There was no further
18 review for releasing. It ceased to exist.

19 **Q.** At this point in time, in 2008, when you adopted the
20 CSMP, we saw that there was mention of thresholds in the
21 earlier LDMP. Do you remember being shown that?

22 **A.** Yes.

23 **Q.** Was there blocking under those thresholds?

24 **A.** No, there were not.

25 **Q.** Is this the first time McKesson was using thresholds as

1 its mechanism for blocking, as opposed to simply blocking if
2 likely to be diverted?

3 **A.** Yes. All systematic blocking started in May, 2008.

4 **Q.** As you were starting this program and in the first year
5 or so of implementing this program, were there challenges in
6 getting the thresholds right?

7 **A.** Yes, there were.

8 **Q.** Tell me about that, please.

9 **A.** Thresholds were new to the industry. They had not been
10 put in place previously. So, reviewing customers'
11 historical purchases to set these thresholds was the way
12 that we went about this.

13 Again, a threshold is a snapshot in time. So, as
14 prescribing went up and pharmacies ordered more, those
15 thresholds were stagnant and needed to be reviewed. So, it
16 was something that -- you know, we constantly looked at a
17 customer's thresholds to see if they were appropriate.

18 **Q.** Were they uniform across all customers?

19 **A.** No, they were not.

20 **Q.** Why not just pick one number and have that apply to
21 every pharmacy?

22 **A.** Because, obviously, there's an average number.
23 However, there are pharmacies that are smaller and you
24 wouldn't want to just give them the average number if they
25 don't need it. There are also pharmacies that are much

1 larger and would need a specific threshold, you know,
2 calculated to their specific business model.

3 **Q.** Do you end up seeing different thresholds -- let me
4 re-ask that. Do you end up seeing different variability in
5 thresholds across customers?

6 **A.** Yes, I do.

7 **Q.** And to take an example we talked about earlier, if you
8 look at something like a VA Hospital and you look at
9 something like a small pharmacy that doesn't serve that many
10 patients, will you see a meaningful difference in their
11 thresholds?

12 **A.** Yes. There would be vast differences between a VA
13 Hospital and an independent pharmacy.

14 **Q.** Now, focusing on this time period from 2008 for the
15 next several years as you were bringing these thresholds
16 into place and blocking on these thresholds, is that that
17 time period you were telling us about earlier when
18 prescribing practices were increasing for prescription
19 opioids?

20 **A.** Yes. They would have been increasing during that time
21 period.

22 **Q.** Does the fact that prescribing practices are increasing
23 have any impact on how challenging or how easy it is to set
24 thresholds in that time period?

25 **A.** Yes, it would have been. Thresholds are basically a

1 mirror of the request and ordering and that would have been
2 a reflection of the increase in prescribing.

3 **Q.** Did your thresholds increase when doctor prescribing
4 went up?

5 **A.** Yes. There's a correlation there.

6 **Q.** There was discussion yesterday about a more recent time
7 frame when thresholds have come down. Do you remember that
8 discussion?

9 **A.** Yes, I do.

10 **Q.** Have you been able to reduce thresholds as we've gotten
11 past that time period you were talking about when
12 prescribing increased and we're now at a time period where
13 prescribing has decreased? Has that led to your ability to
14 reduce thresholds?

15 **A.** Yes, it has. As prescribing has gone down, pharmacies
16 have ordered less and, because pharmacies have ordered less,
17 we're able to reduce our thresholds to those pharmacies.

18 **Q.** Now, just to ask one -- a couple more questions about
19 thresholds, do you conduct diligence in the context of
20 making decisions about whether to increase, or decrease, or
21 keep thresholds the same?

22 **A.** Yes. Before each threshold review is done, there would
23 be due diligence conducted by myself.

24 **Q.** Is that the only setting in which you conduct due
25 diligence on pharmacies?

1 **A.** No. Thresholds do not dictate our due diligence
2 reviews as to whether or not we conduct investigative
3 reports on a pharmacy. They may never ask for a threshold
4 increase and we may still go out and do an Investigative
5 Report on that pharmacy.

6 **Q.** So, are thresholds the only way that problematic
7 customers get flagged or threshold change requests?

8 **A.** No.

9 MR. SCHMIDT: Your Honor, I have one more small
10 topic. I propose I do it --

11 THE COURT: I think we ought to take our break
12 now.

13 MR. SCHMIDT: Okay.

14 THE COURT: Yeah. We'll be in recess for ten
15 minutes.

16 (Recess taken)

17 MR. SCHMIDT: May I proceed, Your Honor?

18 THE COURT: Yes.

19 MR. SCHMIDT: Thank you, Your Honor.

20 BY MR. SCHMIDT:

21 **Q.** When we broke, Mr. Oriente, we were talking about
22 this 2008 to 2013 time period and there were fewer
23 suspicious order reports and blocking when orders went
24 over the threshold.

25 I want to pick back up right where we started -- right

1 where we stopped and ask you about a topic that you were
2 covered -- that you were asked about yesterday.

3 Specifically, you were asked about two emails from this
4 time period, P-13068 and P-8763. And I can give those to
5 you if you want, but do you recall being asked about two
6 emails where you and your colleagues were talking about your
7 work load and there was reference to a tsunami and the
8 river? Do you remember that?

9 **A.** Yes, I recall.

10 **Q.** Were you venting in those emails?

11 **A.** Yes, I was.

12 **Q.** Were there moments in your, in your work where you felt
13 busy and wanted additional help?

14 **A.** There were at times, yes.

15 **Q.** Notwithstanding that, did you feel like you were able
16 to conduct the work you needed to do?

17 **A.** Yes. Even though we were busy, I continued to do my
18 due diligence. It just meant longer hour days and sometimes
19 working weekends.

20 **Q.** If, if you were too busy to do something like a TCR, a
21 Threshold Change Request, how would you handle that?

22 **A.** Yes. As was pointed out, the majority of the increase
23 reviews would come in the last week of the month, of course,
24 because customers would bump up against their threshold.

25 If I could not get to them in that last week of the

1 month and perform my level of due diligence, they would
2 still go into the next month. So the next week or two, the
3 first week, second week of a new month is when I would
4 review those.

5 It would just take longer to get reviewed. It wasn't
6 that they would be, you know, approved with no review.

7 **Q.** Okay. Related question: You were asked about the fact
8 that for portions of this time period there were five DRAs
9 for the whole country. Do you remember that?

10 **A.** Yes, I do.

11 **Q.** Your work as a DRA conducting diligence or other
12 inquiries regarding your pharmacies and your hospitals, were
13 there others outside of the DRA group that you could draw on
14 in conducting your work?

15 **A.** Yes, there was.

16 **Q.** Can you, can you give us an example?

17 **A.** Yes. Distribution center management, the head of the
18 distribution center which I was previously, that person in
19 that position at each distribution center that I had would
20 be available to go make site visits, collect dispensing data
21 from a pharmacy.

22 There was also the sales reps would collect the
23 dispensing data for us when we request it. And there was
24 also one or two people identified in each distribution
25 center that would assist with the CSMP files, customer files

1 at each DC.

2 **Q.** And remind us again how many distribution centers there
3 were.

4 **A.** 28.

5 **Q.** So taking just one at every distribution center, that
6 would add 28 to the five DRAs you mentioned to us?

7 **A.** Yes, at least 28 people.

8 **Q.** Has McKesson added more to its diligence program over
9 time? And I'll come to this 2013 period in a bit. Did the
10 number of DRAs increase?

11 **A.** Yes, it did.

12 **Q.** I'll come back to that. First, I want to just round
13 out these emails.

14 Do you recall that one of your colleagues, Dave Gustin,
15 was on some of those emails where you guys were venting
16 about work load?

17 **A.** Yes, I do.

18 **Q.** Did you ever have an understanding that Mr. Gustin was
19 not able to conduct the level of diligence he needed to do?

20 **A.** No, that was not my understanding. We took our
21 positions very seriously. We did vent from time to time.

22 **Q.** Let's look at an example of that. Could we put P-8309
23 on the board. It's in evidence and you were shown this
24 document yesterday.

25 Just to orient us, this document is dated August 31st,

1 2011. It's from Mr. Gustin. And it looks like it's written
2 to a number of individuals including on the second line cc
3 line you. Do you see that?

4 **A.** Yes.

5 **Q.** Do you recall being asked questions about this email
6 yesterday?

7 **A.** Yes, I do.

8 **Q.** All right. And if you just take a minute to refresh
9 yourself on the substance of his email, first of all, do you
10 see where he's proposing an idea that could be tightened up
11 in the CSMP?

12 **A.** Yes, he is proposing an idea.

13 **Q.** And does he identify that as accounts where there's
14 large gaps, in his words, between the threshold and the
15 purchases?

16 **A.** Yes, he does.

17 **Q.** And then in the second paragraph do you see a reference
18 to an attached spreadsheet?

19 **A.** Yes, there is.

20 **Q.** And what was your understanding of what he did through
21 that spreadsheet?

22 **A.** He identified customers where thresholds could be
23 reduced.

24 **Q.** Was he actually going out and looking at individual
25 customers and comparing purchases to their thresholds?

1 **A.** Yes, he did.

2 **Q.** If it helps to have the spreadsheet, I can give you a
3 new copy of the exhibit. Would it help to actually be able
4 to look --

5 **A.** If you have it, yes.

6 **Q.** Yes.

7 MR. SCHMIDT: I'll just pass out the copy in case
8 the Court doesn't want to sift through a lot of documents.

9 MR. ACKERMAN: Mr. Schmidt, do you have an extra
10 copy?

11 MR. SCHMIDT: I do.

12 THE WITNESS: Thank you.

13 BY MR. SCHMIDT:

14 **Q.** And if you look at this spreadsheet, it's a
15 spreadsheet doing what you just told us, going through
16 different pharmacies and identifying places where
17 thresholds are higher, where there's a gap between
18 thresholds and the amount they're actually purchasing?

19 **A.** Yes, that's what this is.

20 **Q.** Is this an example of Mr. Gustin being proactive in
21 trying to address pharmacies?

22 **A.** Yes, he was. If he was lowering thresholds, he was
23 looking to basically prevent customers from ordering more
24 product.

25 MR. ACKERMAN: Your Honor, I just want to voice an

1 objection to the leading questions. I do understand your
2 prior ruling, but this is a witness from McKesson and the
3 last question was rather leading.

4 THE COURT: Well, it is leading, but do your best
5 not to lead him, Mr. Schmidt.

6 MR. SCHMIDT: I will, Your Honor.

7 BY MR. SCHMIDT:

8 **Q.** Let me focus back on the second sentence of this
9 email if I could. It's still up on the screen where he
10 talks about an area that could be tightened up.

11 THE COURT: Let me interrupt and say something.

12 I realize this is cross-examination, but this is a
13 friendly witness and, and I think it's fair to be careful
14 about leading questions even though they're normally
15 permitted on cross.

16 MR. SCHMIDT: I thought I was. I'll continue
17 trying to do that, Your Honor.

18 BY MR. SCHMIDT:

19 **Q.** If you look at the second sentence, do you see the
20 reference to the number of accounts we have that have
21 large gaps between the amount of oxy or hydro they're
22 allowed to buy (their threshold) and the amount they
23 really need (their current purchases)?

24 **A.** Yes.

25 **Q.** Do you have an understanding of what that, quote, large

1 gap he's referring to is?

2 **A.** Yes.

3 **Q.** Tell us what that is.

4 **A.** Yes. So, for instance, if a threshold was 10,000 and a
5 customer is only purchasing 5,000, okay, that gap between
6 what they're purchasing and what their threshold and
7 McKesson had permitted that pharmacy after our due diligence
8 to purchase is that gap that he's talking about. So he
9 wants to, in this case, bring down that 10,000 -- excuse
10 me -- 10,000 threshold maybe to look 7,500.

11 **Q.** Do you know one way or another whether simply because a
12 customer has a threshold at a certain level they have to
13 order up to that level?

14 **A.** No. Most customers order below their threshold.

15 **Q.** All right. Let's take this down and get back to the
16 manual, please, the CSMP.

17 I'd like to, if I could, direct your attention to Page
18 6, please. I believe you were asked about this language
19 yesterday. There is a section entitled "Threshold Review."
20 And down at the bottom it's entitled "Threshold Excursion."

21 Do you see that?

22 **A.** Yes, I do.

23 **Q.** The manual says once a customer has reached their
24 monthly maximum threshold amount, all subsequent orders for
25 that item will be blocked. Do you see that?

1 **A.** Yes, I do.

2 **Q.** What does it mean to block an order?

3 **A.** It means that that order does not get shipped. It just
4 doesn't go any further. It, it doesn't go to the
5 distribution center. It never comes out of our computer
6 system.

7 **Q.** It then says -- I want to focus on that language at the
8 end of the sentence. "All subsequent orders for that item
9 will be blocked."

10 Does that refer to blocking for all time or blocking
11 for that month?

12 **A.** That would be any additional orders for that item
13 within that month would be blocked.

14 **Q.** Got it.

15 THE COURT: Do you notify the pharmacist when you
16 block an order?

17 THE WITNESS: Yes. They were notified originally
18 in the program. A statement would come out that they have
19 exceeded their -- attempted to exceed their threshold. They
20 were notified. We no longer notify them. It's just zeroed
21 out on the invoice.

22 THE COURT: And does that go back to them to let
23 them know they're not going to get any pills or how do they
24 know that the order is not going to be filled?

25 THE WITNESS: The, the order is blocked. I'm not

1 certain what prints on an invoice today, Your Honor. But I
2 know it did used to say "exceeded monthly maximum."

3 THE COURT: Okay.

4 BY MR. SCHMIDT:

5 Q. Under the CSMP, if a customer exceeded their
6 threshold, could they request a change to their
7 threshold?

8 A. Yes, they could request a change.

9 Q. What information would you look at in evaluating that
10 change?

11 A. So the first piece of information would be what we call
12 our TCR, Threshold Change Request. That form would come in.
13 Along with it would be dispensing data on that particular
14 base code so we could see their dispensing patterns.

15 We would also ask as to why, why do they need the
16 increase, what's changed in their business. As you noted,
17 one example is a competitor may have closed.

18 Q. Who, who is responsible for approving threshold
19 changes?

20 A. It would be one of the four DRAs.

21 Q. Someone in your position?

22 A. Yes.

23 Q. Now, you were asked some questions yesterday about
24 documenting threshold changes and the diligence relating to
25 threshold changes. Do you recall being asked those

1 questions?

2 **A.** Yes, I do.

3 **Q.** Do you know whether that documentation is kept for all
4 time for every pharmacy going back 10 years?

5 **A.** No, I don't.

6 **Q.** If we try to find diligence for a given pharmacy today
7 and we can't find a file, does that mean it was never
8 conducted?

9 **A.** No, it would not.

10 **Q.** Why is that?

11 **A.** There were some electronic tracking of documents.
12 There were some paper documents. There were files the DRA
13 would have. There were files the distribution center would
14 have. It's quite possible that not all papers made it to
15 the file.

16 **Q.** Were those files kept for all time for every pharmacy?

17 **A.** Yes, those CSMP files, as we call them, are still in
18 existence.

19 **Q.** If it made it into the file?

20 **A.** Yes.

21 **Q.** Okay. I'd like to go to Page 7, please. And it talks
22 about levels of review. Do you see that?

23 **A.** Yes.

24 **Q.** And I just want to scroll through these to orient
25 ourselves and then I'm going to ask you about these levels.

1 We see at the top here Level I review. And if we
2 scroll down, it says "How To Do, Results, Special Warnings."

3 And then we see Level II review.

4 If we scroll down, the next page we see Level III
5 review.

6 Are you familiar with those three levels of review that
7 would happen when an order went over a threshold?

8 **A.** Yes, I am. It would have attempted to go over a
9 threshold, yeah. They never did go over.

10 **Q.** Because they would be blocked?

11 **A.** Exactly.

12 **Q.** Let's go back to the prior page, please, Page 7. Let's
13 start with Level I review. Could you just tell us at a high
14 level what Level I review is?

15 **A.** Yes. A Level I review would be a list of customers
16 that had orders blocked that would generate for each
17 distribution center. And then someone at the distribution
18 center would follow up with that customer and ask why did
19 they attempt to order above their threshold.

20 **Q.** Will you scroll down a little bit.

21 It talks about results. And do you see the reference
22 to blocking?

23 **A.** Yes. That, that item would continue to be blocked for
24 the remainder of the month.

25 **Q.** Okay. Could a, could a blocked order be resolved at

1 this stage without going any further?

2 **A.** Yes, yes, it could be, yes.

3 **Q.** And is there any reference to whether if you just keep
4 an order at Level I if it doesn't go higher whether it's
5 treated as suspicious and reported to the DEA? Is there any
6 reference in the Level I review to that happening?

7 **A.** No, there is not during a Level I.

8 **Q.** Let's go to Level II. Can you tell us what Level II
9 is, please?

10 **A.** Yes. Level II would be an escalation to the DRA,
11 myself, or one of my colleagues.

12 **Q.** Let me just point to some language on that. It says,
13 "If the Level I review is conducted by DC management as
14 being conclusive, a Level II review is required."

15 Do you see that?

16 **A.** Yes.

17 **Q.** Is that what you were just telling us about?

18 **A.** Yes. It would then be escalated to my level or one of
19 my counterparts for us to do a review of that pharmacy.

20 **Q.** Let's go to the next page where it describes how to do
21 a Level II review. Do you see that language for Level II up
22 on the screen?

23 **A.** Yes, sir.

24 **Q.** Is there any reference in the Level II process to an
25 order at that stage being viewed by the company as

1 suspicious and reported to the DEA?

2 **A.** No. Level II reviews were not reported off of this
3 process.

4 **Q.** All right. Could an order be resolved at the Level II
5 stage without going to the Level III stage?

6 **A.** Yes, it could be. If the DRA that did the Level II
7 felt that the inquiry was acceptable, it would end at a
8 Level II.

9 **Q.** What if they did not think the inquiry was acceptable?

10 **A.** Then it would be escalated to my senior management by
11 myself and also by my colleagues.

12 **Q.** And if we scroll down to have the full Level III
13 section on the screen, can you tell us what a Level III
14 review entails?

15 **A.** Yes. All Level IIIs, all controlled substances for
16 that customer, not just that specific base code that was
17 blocked, would be blocked. So, basically, the customer
18 would be blocked from all controlled substances.

19 I would escalate it to the senior VP of distribution
20 operations who also was over regulatory. That would be Don
21 Walker. My regional SVP was Pete Pasquale. Then there's a
22 VP of distribution operations would be notified, as well as
23 the vice president general manager over that distribution
24 center would also be notified.

25 **Q.** So let me pick up on that DEA notification point.

1 Is there specific language in the description of what a
2 Level III review is that indicates whether at that stage the
3 company treats the order as suspicious and reports it to the
4 DEA?

5 **A.** Yes. On line 5 with law department's guidance,
6 regulatory affairs, myself, would contact the DEA office to
7 discuss our findings.

8 And on line 7 I would notify DEA about us terminating a
9 customer.

10 **Q.** Okay. And just let me point you to two other places.

11 Let's just look at the preamble to Level III. Do you
12 see it? It says if after the level I and Level II reviews
13 have been conducted and the transaction, or transactions are
14 deemed, quote, suspicious, a Level III review is necessary.

15 Do you see that?

16 **A.** Yes, I do.

17 **Q.** Is, is this providing in your policy the point at which
18 you will treat an order as suspicious, in quotes, under the
19 regulation?

20 **A.** Yes, after a Level III.

21 **Q.** And then if we look at item 3, does it say the
22 customer/transaction are reported to DEA headquarters as
23 suspicious?

24 **A.** Yes. At this point, the order would be reported as
25 suspicious.

1 Q. Just to orient ourselves and to close this out as to
2 where we are, what level would blocking occur at?

3 A. Prior to Level I.

4 Q. What level would suspicious order designation and
5 reporting occur at?

6 A. At a Level III.

7 Q. Okay. If you're blocking prior to Level I when there's
8 exceeding of the threshold, but you're reporting at Level
9 III, does that mean by definition there will be more or less
10 suspicious orders reported?

11 A. There would be less suspicious orders reported.

12 Q. Does that mean by definition there would be orders that
13 would be blocked but not reported because they don't reach
14 Level III review?

15 A. Yes.

16 Q. Did you understand that that's what DEA wanted, the
17 blocking but with less suspicious order reporting?

18 A. That was my understanding, yes.

19 Q. Now, did you have occasion to talk with DEA about this
20 being exactly how you were proceeding under the CSMP?

21 A. Yes, McKesson did.

22 Q. All right. I want to come back to that. But before I
23 do, I want to round out some other aspects of how your CSMP
24 worked.

25 Did your CSMP include -- we've heard this concept a lot

1 over the last two days, diligence. Did your CSMP include a
2 diligence component?

3 **A.** What was the last word?

4 **Q.** A diligence component.

5 **A.** Yes, sir.

6 **Q.** Was that more or less than what you were doing prior to
7 2008?

8 **A.** It was more.

9 **Q.** Okay if I write "greater diligence" on the board?

10 **A.** Yes.

11 **Q.** Okay. I'd like to fill that out a little bit, if I
12 could, in terms of what that involved, Mr. Oriente.

13 First of all, was there specific diligence you
14 undertook before taking on a new customer?

15 **A.** Yes, absolutely.

16 **Q.** Let's go back to the, the CSMP manual, Page 381.

17 MR. RAFFERTY: What page?

18 MR. SCHMIDT: I'm sorry, Exhibit MC-WV-381, Page
19 9.

20 BY MR. SCHMIDT:

21 **Q.** Do you see the heading "New Customer On-Boarding
22 Process"?

23 **A.** Yes.

24 **Q.** Were there specific -- what does "on-boarding" mean?

25 **A.** On-boarding means to bring a customer to McKesson and

1 start business with them; in this case, for controlled
2 substances, as well as them ordering Rx product.

3 **Q.** Were there specific on-boarding steps you took during
4 this time period as part of your diligence?

5 **A.** Yes, there would have been.

6 **Q.** Can you talk with us about those steps?

7 **A.** Yes. If it was a brand new, what we call a start-up
8 pharmacy, --

9 **Q.** Uh-huh.

10 **A.** -- we would go visit that pharmacy, see the physical
11 location of it, make sure that they have, that they're
12 licensed by the state and that they also have a DEA
13 registration. We would need proof of that.

14 We would also have the new customer start-up fill out a
15 questionnaire. And that's how a brand new start-up pharmacy
16 would be treated.

17 If there was a new customer coming to McKesson that was
18 a pre-existing pharmacy that they were just changing
19 wholesalers, we would do the questionnaire, the site visit,
20 the license verification. And in addition to that, we would
21 ask for dispensing information in order to review where
22 thresholds should be set and also to identify what it was
23 that they were dispensing. It would be their full
24 dispensing record.

25 **Q.** Okay. You made reference to a questionnaire.

1 If you scroll down just a little bit in this document,
2 do you see a discussion of customers questionnaire?

3 **A.** Yes, I do.

4 **Q.** Did you regularly work with those -- or have you
5 regularly worked with those questionnaires in your work at
6 McKesson?

7 **A.** Yes. It was a daily type occurrence of us to review
8 questionnaires.

9 **Q.** Has the questionnaire evolved over time?

10 **A.** Yes, it has.

11 **Q.** Why is that?

12 **A.** As guidance and also the marketplace has changed, we,
13 we adapted our questionnaire to ask different questions to
14 identify points that could potentially be diversion.

15 MR. SCHMIDT: I'd like to -- may I approach, Your
16 Honor? Thank you.

17 THE WITNESS: Thank you.

18 BY MR. SCHMIDT:

19 **Q.** Mr. Oriente, I've handed you a document labeled
20 MC-WV-185. It's the template questionnaire from 2013.
21 Are you familiar with this document?

22 **A.** Yes, I am.

23 **Q.** Have you regularly used it in the course of your work?

24 **A.** Yes, I have.

25 MR. SCHMIDT: We move MC-WV-185 into evidence,

1 Your Honor.

2 MR. RAFFERTY: No objection, Your Honor.

3 THE COURT: 185 is admitted.

4 MR. SCHMIDT: Thank you.

5 BY MR. SCHMIDT:

6 **Q.** Put it up on the screen, please.

7 We see the McKesson logo and at the top there's a space
8 for the customer name. It asks the question of whether
9 they're primary with McKesson. Do you see that?

10 **A.** Yes, I do.

11 **Q.** And why, why is that question important?

12 **A.** Again, that's important because if you're primary, that
13 means that we are your main supplier, which would mean you
14 would be purchasing the majority of your products from
15 McKesson. And that would be taken into account when your
16 threshold is set.

17 If you're not primary, you're known as secondary. And,
18 so, we would be a, a back-up distributor to that customer.
19 They would get lower thresholds.

20 **Q.** It then says "McKesson Sales Representative." Do you
21 see that?

22 **A.** Yes. They would put their name there.

23 **Q.** Did you have your sales representatives help you in
24 having these questionnaires completed?

25 **A.** Yes. They would sometimes conduct this questionnaire,

1 not always. Sometimes it was DC management, as I said
2 earlier, would go out to customers, and sometimes it would
3 be myself.

4 **Q.** And then below that it says "Operations Review" and
5 "Regulatory Review."

6 Do you know what that refers to?

7 **A.** Yes. Operations Review would be the DC management
8 would look at it before passing it on to myself, and then I
9 would review it.

10 **Q.** Let's go to the next page. I just want to quickly go
11 through some of the types of information you would gather
12 through this questionnaire.

13 Do you see there's a section called "General
14 Information and Licensing"? Do you see that?

15 **A.** Yes, sir.

16 **Q.** If we just kind of scroll down, it looks like there's
17 information about the pharmacy license. And if we keep
18 scrolling down, information about the licensure of the
19 pharmacist. What, what was the purpose of gathering that
20 information?

21 **A.** Yes. All of this information is required before we can
22 distribute to a pharmacy, that they're licensed and in good
23 standings with the state, as well as with the DEA, that they
24 have valid licenses and registrations.

25 And, also, we would review and investigate, pick the

1 pharmacist in charge to make sure that they have not had any
2 disciplinary action, most importantly pertaining to any
3 previous diversion issues.

4 **Q.** Let's go to Page 3, please. There's various questions
5 here about the ownership history of the pharmacy.

6 If we scroll down, we have additional pharmacies; do
7 they have disciplinary issues.

8 Go to the next page. Various other questions about the
9 history, do they conduct background checks, that kind of
10 thing. Do you see that?

11 **A.** Yes, I do.

12 **Q.** Why would you gather that type of information?

13 **A.** We would want to know their business processes such as
14 were they doing background checks on their employees; did
15 they have any issues with thefts in the past; has there been
16 any disciplinary action against them. It would be on this
17 form.

18 And then besides them checking "yes" or "no," we would
19 do our own search to verify that they were giving us
20 accurate information.

21 **Q.** Why would you do that?

22 **A.** I always use the motto trust but verify. So if I was
23 signing off on something, I wasn't going to just take their
24 word for it.

25 **Q.** Let's go to Page 5, please. It says "Business

1 Information" and it looks like it's got questions about what
2 type of business is it, who else have they been supplied by,
3 questions like in (d) where their new prescriptions come
4 from, do they have a website. And that continues on Page 6
5 which has questions about do they serve pain clinics,
6 nursing homes, et cetera. Do you see that?

7 **A.** Yes, I do.

8 **Q.** Why would you gather that information?

9 **A.** That would be important for us to understand their
10 makeup; who, who is their customer, the old "know your
11 customer's customer," and to understand any of the
12 differences that a pharmacy might have in order for us to
13 feel comfortable in doing business with them.

14 **Q.** Okay. Let's go to the next page, please, Page 7. And
15 this asks for information about prescription information.
16 Do you see that?

17 **A.** Yes, I do.

18 **Q.** And what, what is being gathered here?

19 **A.** Again, we would ask for three full months of
20 prescription data. Again, that would give us a nice picture
21 into the pharmacy business.

22 And then (b) would cover, you know, has there been
23 significant growth during this period, are they seeing
24 additional prescriptions coming in. And then if "yes," we
25 ask them to explain why, why it is, what's causing that.

1 And then we take a look at their payment method that
2 they receive, whether it's insurance, government aid, or
3 cash for the prescription.

4 **Q.** And then below that, if we scroll down a little bit,
5 there's a place for the McKesson sales rep, if they're the
6 one doing this, to sign. There's a place for the owner to
7 sign. Why would you have the owner sign?

8 **A.** Yes, that they were attesting to that the information
9 in this document is accurate.

10 **Q.** Let's go to the last page. After the owner's
11 signature, there's a page that says "Physical Inspection
12 Completed by McKesson Representative." Do you see that?

13 **A.** Yes, I do.

14 **Q.** What is, what is the purpose of this information?

15 **A.** Again, to observe such things as: Is there any
16 activity outside the pharmacy that could be deemed
17 suspicious? Are there long lines? Do they have a security
18 guard at the pharmacy? Unusual signage, for instance, and,
19 you know, "cash only" in the window, things like that. And
20 we also would take pictures of the documenting on our visit
21 there with the pharmacy both inside and out.

22 **Q.** And this page appears after you have the pharmacist
23 sign. Why does it appear after you've had the pharmacist
24 sign? Why is it its own section?

25 **A.** I'm not aware as to why that is. I'm sorry.

1 Q. Would the pharmacist help you complete this page?

2 A. No, they would not.

3 Q. Why is that?

4 A. Because, again, they could give you information that
5 may not be accurate. We wanted to do our own assessment.

6 Q. Was this useful information to have that you received
7 through these pharmacies when you were on-boarding
8 customers?

9 A. Yes, absolutely.

10 Q. Were there customers where, based on this information
11 and the other information you received about the pharmacy,
12 you said, no, we're not going to on-board this pharmacy?

13 A. Yes, there were times where we refused a customer from
14 coming to McKesson.

15 Q. Was this the end of the diligence or did you continue
16 to conduct diligence over time like pharmacy customers?

17 A. No, that would have been the start of the diligence.

18 Q. Can you describe for the Court further diligence that
19 would be conducted on pharmacies after you on-boarded them?

20 A. Yes. Any time that they would get a blocked order, I
21 would review those blocked orders and take a look at when
22 they occurred in the month, were they early in the month,
23 mid month, late month. That would aid in my investigation.

24 I would also go out and do site visits myself. And,
25 again, if they had a blocked order, they'd go through that

1 three-level process. So that was another part of due
2 diligence.

3 Another part I would do is look up on the OIG website
4 to see if there was any disciplinary action against a
5 customer.

6 I would also do Google searches and such on the name of
7 the pharmacy, the pharmacist itself to get some background
8 information, see if there were ever any articles, public
9 articles available showing any issues that could have been
10 diversion.

11 **Q.** Let me ask you about a few of, of those points you
12 mentioned.

13 In terms of the OIG website, can you tell the Court, or
14 say for the record what the OIG website is and why you would
15 go there?

16 **A.** Yes. It's the Office of Inspector General, and it
17 would list any actions taken against a business or, or the
18 person, the pharmacist or owner.

19 **Q.** Why would you be separately Googling or searching on
20 the internet for a pharmacist and the pharmacy?

21 **A.** To see if there was any other disciplinary action that
22 may not have been brought by the Inspector General.

23 **Q.** And site visits, you talked about doing site visits.
24 Did you personally conduct site visits?

25 **A.** Yes, I did.

1 **Q.** Could you give the Court a sense of how regular that
2 was for you?

3 **A.** It typically was weekly I would go out and visit
4 pharmacies.

5 **Q.** How did you decide which pharmacies to visit?

6 **A.** The criteria was initially independent pharmacies.
7 That was like one of the top criteria. Then we did by size.
8 So we picked those pharmacies that were the highest
9 purchasers of the opioid drugs.

10 And then also if a pharmacy was doing a lot of
11 omitting, that was another criteria I would use to go visit.

12 And then if I was receiving frequent requests for
13 increases, that would be a -- we call it a red flag to go
14 visit because it would be why is this pharmacy going up so
15 quickly.

16 **Q.** You, you just used a term called "omits." Can you tell
17 us just for the record what an omit is?

18 **A.** Yes, any order that's blocked. It's synonymous. A
19 blocked order is an omit.

20 **Q.** Just so, so we all have a sense of it for the record,
21 can you kind of describe what a site visit that you would
22 conduct would entail? What would be, what would be involved
23 in that?

24 **A.** Yes. Most of my site visits I would go unannounced.

25 **Q.** Why would you do that?

1 **A.** I wouldn't want the pharmacist to know I was coming.

2 **Q.** Uh-huh.

3 **A.** Again, I'm not distrusting them, but I want to do a
4 surprise visit. So I would show up unannounced.

5 Before going into the pharmacy, I'd sit outside a while
6 and observe the traffic of the, the clientele that was going
7 in and to observe if there was any, again, red flags that I
8 saw.

9 I would then walk in and say "hello" and introduce
10 myself as the McKesson regulatory person and talk to that
11 pharmacist and see how they felt while I was there to talk
12 to them. Did they seem nervous? Did they feel comfortable
13 in talking to me? Were they forthcoming with information or
14 were they trying to kind of give fast, short answers?

15 And at that time, I would ask them about what due
16 diligence they were performing, how were they reviewing
17 their prescriptions, were there any certain prescribers that
18 were a large part of their pharmacy.

19 So that, that was the type of interaction that I would
20 have during these site visits. I would also take some
21 photographs.

22 **Q.** And just to, to ask for a little more detail on those
23 points, what was it when you were showing up first and
24 sitting outside and you described watching, what is it you
25 were watching for?

1 **A.** I would look for out-of-state plates was one flag. I'd
2 look for long lines. I would look for if there was a
3 security guard on site. And I would also look if there was
4 any drug transactions occurring either on the premises or
5 nearby.

6 **Q.** Perhaps you covered this already, but just to be sure I
7 have it, what would you be trying to look for when you went
8 inside and talked to the pharmacist?

9 **A.** I'd look to see is the pharmacy what would be known as
10 a full-service pharmacy, does it have what we call the front
11 end which would be your medical equipment, OTC. Maybe
12 they'd have a section of cards and different novelties, as
13 well as the Rx part behind the counter. So that would be
14 one thing I'd look for.

15 While I was there watching them fill prescriptions, I
16 would watch to see are customers paying with cash, which is
17 another possible red flag that we would look for.

18 **Q.** And just at a high level, thinking of these steps you
19 told us about, taking the pictures, watching outside, going
20 inside looking around and talking to the pharmacist there,
21 why is it you were doing those site visits at a high level?

22 **A.** Number one, they were part of the program. And the
23 reason they were part of the program, it was part of our due
24 diligence to understand our customer.

25 **Q.** Were there instances when you performed this kind of

1 diligence that we've been talking about with existing
2 customers and McKesson made the judgment to not do business
3 with them anymore, cut them off?

4 **A.** Yes, there would have been where I terminated existing
5 customers.

6 **Q.** And why would it be that you would take on a customer
7 and then at a later point in time terminate them?

8 **A.** There would have been changes in their business and
9 purchase patterns that I would have observed. And also over
10 time, a customer can change what they're doing. And if
11 there was noted suspicious activity over the years, once I
12 identified it, I would terminate -- go to Level III, alert
13 my superiors and terminate the customer.

14 **Q.** Would you conduct a Level III review even in the
15 absence of an element just based on what you saw from your
16 reviews?

17 **A.** Yes. Level III could be conducted without a Level I or
18 II previously before it got to -- it did not need to go
19 through a I and II in order to get to III. It could go
20 right to III.

21 **Q.** Got it. I want to touch for a moment on a term you've
22 mentioned a couple times today and that you were asked about
23 yesterday, "red flags." Do you remember using that term
24 today and then getting asked questions about that yesterday?

25 **A.** Yes, sir.

1 Q. Could you just tell the Court what, what a red flag is?

2 A. Yes. Red, red flag is basically the terminology used
3 that, you know, you raise a red flag. It would be something
4 that would cause you to pay attention to it. There were
5 several red flags that we looked at.

6 Q. Does the presence of a red flag alone mean that
7 something has gone wrong, that diversion has occurred or
8 will occur?

9 A. No, it doesn't. Initially there are red flags. And
10 then a determination is made if that is a resolved red flag
11 or an unresolved red flag.

12 If it's resolved, it means that we saw information that
13 we felt comfortable explaining the red flag that occurred.
14 If it's unresolved, then that's still a problem.

15 Q. And that goes to what I wanted to ask you next. Can
16 red flags be resolved?

17 A. Yes, absolutely.

18 Q. For example, are there questions in the questionnaire
19 we went through that get at this idea of identifying
20 potential red flags?

21 A. Yes, there are.

22 Q. Can those be resolved depending on the entire picture?

23 A. Yes, they could be through additional questioning of
24 the pharmacist.

25 Q. I want to show you a document on that point that you

1 were shown yesterday.

2 MR. SCHMIDT: May I approach, Your Honor?

3 THE COURT: Yes.

4 MR. SCHMIDT: I'll just give a copy to the Court.
5 It's already in evidence. For the witness.

6 THE WITNESS: Thank you.

7 BY MR. SCHMIDT:

8 Q. Mr. Oriente, I've put in front of you P-12643.
9 It's in evidence. And it says "McKesson CSMP Red
10 Flags." And this statement of red flags is from May,
11 2015. Do you see that?

12 A. Yes, I do.

13 Q. Do you recall being asked questions about various of
14 the red flags in this document yesterday?

15 A. Yes.

16 Q. Were you -- this is from May, 2015. My question to you
17 is: Were you looking at many of these red flags before this
18 time period?

19 A. Yes, I would have been.

20 Q. All right. Let's take an example. If we scroll down
21 this page, it says Section 1, Apparent Red Flags. Do you
22 see that?

23 A. Yes.

24 Q. And there's physical location. Do you see that?

25 A. Yes, there is.

1 Q. Would you be looking at many of those red flags going
2 back to 2008 in terms of these site visits?

3 A. Yes, all of them.

4 Q. Let's go to Page 2, please. It says "Responses in the
5 Customer Questionnaire." Do you see that?

6 A. Yes.

7 Q. If we scroll through to Page 3, it goes on to Page 3.
8 Do you see that?

9 A. Yes.

10 Q. Did you gather information on many of those points in
11 your questionnaire going back to 2008?

12 A. Yes.

13 Q. Okay. We talked about how your questionnaire changed
14 over time. Do you recall that?

15 A. Yes, I do.

16 Q. Did you update -- did your understanding of potential
17 red flags update over time?

18 A. Yes, it would have.

19 Q. Why is that?

20 A. As different diversion trends evolved and, and came to
21 light, it would have been identified and added to our red
22 flag list.

23 Q. Okay. Let's take an example of that. If we go to Page
24 4, there are some non-statistical red flags. Do you see
25 that?

1 **A.** Yes, I do.

2 **Q.** The first one is geographic location. Do you see that?

3 **A.** Yes.

4 **Q.** Yesterday you were asked a question about that first --
5 actually, second sentence. "The pharmacy located in a
6 geographic area known or suspected of having higher than
7 normal prescription drug diversion levels of prescribing."

8 Do you see that?

9 **A.** Yes.

10 **Q.** Do you remember being asked about that yesterday?

11 **A.** Yes, I do.

12 **Q.** If you look, there's a footnote. And I want to go down
13 to the footnote if we could, bottom of the page.

14 Does this indicate that the source for that is the 2014
15 Centers for Disease Control?

16 **A.** Yes, it does. Yes, it does.

17 **Q.** And, so, is that an illustration of what you were just
18 telling us about that as you learn more, as trends and
19 diversion became more known, you updated the diligence and
20 the red flags?

21 **A.** Yes.

22 **Q.** All right. Let's go to Page 6, please. Do you see
23 that there's a heading on Page 6 about other distributors?

24 **A.** Yes.

25 **Q.** You were read that first sentence, "Pharmacy purchases

1 controlled substances from other distributors."

2 Do you see that?

3 **A.** Yes.

4 **Q.** I want to read a little more.

5 Quote: "It is not uncommon for a pharmacy to have a
6 secondary supplier to assist in meeting legitimate inventory
7 needs."

8 And then it provides a benchmark and it says, "However,
9 customer commitments can vary and should be factored into
10 the evaluations."

11 Is that your understanding of secondary distributors?

12 **A.** Yes. In the region that I had, it was quite common for
13 pharmacies to have two suppliers and sometimes even three
14 suppliers.

15 **Q.** And that's what I wanted to ask you. Is this
16 consistent with your experience or not and can you
17 characterize that?

18 **A.** Yes, it is. And, again, we would look to see who's the
19 primary supplier, who's the secondary, and who's the
20 tertiary supplier.

21 **Q.** All right. I'd like to go back in time, if I could,
22 back to the start of this period when you adopted these
23 policies of infrequent suspicious order reporting, blocking,
24 and greater diligence.

25 You mentioned earlier that you had occasion to talk

1 with the DEA about these changes you were making. Do you
2 recall that?

3 **A.** Yes.

4 MR. SCHMIDT: I'd like to show the Court what
5 we're, what we're talking about when we talk about that,
6 please.

7 May I approach, Your Honor?

8 THE COURT: Yes.

9 THE WITNESS: Thank you.

10 BY MR. SCHMIDT:

11 **Q.** You're welcome. I've marked as Exhibit P-42657 a
12 slide deck with notes. It says, "Controlled Substance
13 Monitoring Program Delran Facility Overview,
14 November 6th, 2008."

15 And if you look at the third page, it says "McKesson
16 Meeting Attendees." Do you see your name under those
17 McKesson meeting attendees?

18 **A.** Yes, I do.

19 **Q.** Are you familiar with this document?

20 **A.** Yes, I am.

21 **Q.** Was this a presentation given to the DEA in November,
22 2008?

23 **A.** Yes, it was.

24 MR. SCHMIDT: We move P-42657 into evidence.

25 THE COURT: Any objection?

1 MR. RAFFERTY: No objection, Your Honor.

2 THE COURT: It's admitted.

3 BY MR. SCHMIDT:

4 Q. So I want to look at what information you were
5 giving the DEA in this document. But before I do, can
6 you just give us an overview of what the context of this
7 presentation is, what it is you were presenting?

8 A. Yes. Our program at this date was about six months
9 old, and we were letting the DEA know exactly what our
10 program was, how it was being implemented, and what the
11 expectations of it were.

12 Q. Was part of the purpose of the meeting to obtain
13 feedback on your program if appropriate?

14 A. Yes, it was.

15 Q. All right. Let's start with Page 7, please. It says
16 "CSMP Components Objectives." And it has different
17 elements: Know your customer, monitor omitted orders,
18 customer review, use tools, record retention, training, and
19 security. Do you see that?

20 A. Yes, I do.

21 Q. And do those points go to the elements we've been
22 discussing about suspicious order reporting, blocking, and
23 greater diligence?

24 A. Yes, it does.

25 Q. Let's go to Page 8. It says "Know Your Customer,

1 Thresholds." Do you see that?

2 **A.** Yes.

3 **Q.** And then it says "Threshold Determination. Initial
4 customer thresholds were established using 12-month purchase
5 history plus margin of 10 percent."

6 Can you tell us what that refers to?

7 **A.** Yes. When we first established thresholds, we used
8 12-month purchase history for all customers. And then we
9 put a small margin of 10 percent on top of that in order to
10 initially set the threshold.

11 **Q.** And that, that 10 percent margin you described, there
12 was talk yesterday about buffers. Do you remember that?

13 **A.** Yes.

14 **Q.** Is that 10 percent a buffer?

15 **A.** Yes, it would be. And it was put in because of the
16 variability in purchasing month over month.

17 **Q.** That's what I wanted to ask you. Why have a buffer?

18 **A.** In order to offset this variability where pharmacies
19 order more or less each month.

20 **Q.** And in this time period, if you're basing their
21 thresholds on 12-month purchase history and doctors, as you
22 told us earlier, are writing more and more prescriptions,
23 would you expect their purchases to go up over the course of
24 a year or go down?

25 **A.** I would expect them to go up because purchasing would

1 have increased.

2 **Q.** So just to be clear, did you tell the DEA that your
3 thresholds would be based on customer history with a buffer?

4 **A.** Yes. They were shown right there on that slide.

5 **Q.** And do you recall any push-back reaction from the DEA
6 to that?

7 **A.** I don't recall any, no.

8 **Q.** Let's look down at the notes field. It says "Michael
9 Slide." Would this be your slide?

10 **A.** Yes, it would.

11 **Q.** And I want to highlight one particular entry here. It
12 says "Large drug chain Rite-Aids," and then it gives an
13 average oxycodone of 27,000. Do you see that?

14 **A.** Yes, I do.

15 **Q.** Were you giving the DEA notice in this about some of
16 your larger thresholds?

17 **A.** Yes, we were.

18 **Q.** Do you recall any reaction they had to that?

19 **A.** No, I don't recall any reaction to their seeing this.

20 **Q.** Now, has Alprazolam, is that a prescription opioid?

21 **A.** Yes, it is. No, I'm sorry. I don't believe Alprazolam
22 is an opioid.

23 **Q.** Okay. And then it has hydrocodone. Is this a
24 prescription opioid?

25 **A.** Yes.

1 **Q.** It says "hydrocodone zero." Do you know why
2 hydrocodone was zero for Rite-Aid?

3 **A.** Yes. At the time of this, 2011 -- no, 2008 -- excuse
4 me -- hydrocodone -- Rite-Aid was self distributing
5 Schedules III through V. And at that time, hydrocodone was
6 a Schedule III. So McKesson only distributed CIIs at this
7 time to Rite-Aid.

8 **Q.** Okay. Let me see if I can put that in terms of
9 oxycodone and hydrocodone. Did they distribute oxycodone?

10 **A.** McKesson distributed oxycodone to the Rite-Aids, yes.

11 **Q.** Was that a Schedule II?

12 **A.** Yes, it was.

13 **Q.** And at this time, what schedule is hydrocodone?

14 **A.** It was a Schedule III.

15 **Q.** Got it. Let's go to the next page.

16 On the next page if we look at the top half, did you
17 walk the DEA through how you would -- if you look at the
18 heading: Know your customer, new customer on-boarding, how
19 you would on-board customers including talking about the
20 questionnaire.

21 **A.** Yes, it was explained to them.

22 **Q.** All right. I want to focus specifically on the first
23 sub heading. Do you see where it says "Partnership
24 Between"?

25 **A.** Yes.

1 Q. And it refers to independent small and medium chains,
2 ISMCs. Do you see that?

3 A. Yes, I do.

4 Q. If we then go further down to the third heading, it
5 says "Retail National Accounts." Do you see that?

6 A. Yes, I do.

7 Q. And then there's two bullets under there. My, my
8 question is, did you make clear to the DEA that you had one
9 approach for the independent chains and another approach for
10 the retail national accounts?

11 A. Yes, we did.

12 Q. What, what was that distinction that you told them
13 about?

14 A. We explained to them that the retail national accounts
15 also have their own regulatory departments and they review
16 what their stores are dispensing at a level that the
17 independent pharmacies did, did not do.

18 Q. And what does it mean when you say thresholds assigned
19 by corporate template?

20 A. Basically, we looked at the Rite-Aids and used a
21 corporate approach based off of each of their pharmacies,
22 but would deal with their corporate office on any reviews
23 and not the individual pharmacy.

24 Q. The next bullet, changes made via dispensing history in
25 HQ TCR. What was that saying?

1 **A.** Yes. So we would still get dispensing history on a, on
2 a pharmacy, and we would work with the regulatory department
3 of the chain at their headquarters.

4 Again, that was because they would have reviewed their
5 own store before submitting it to McKesson for review.

6 **Q.** When you told the DEA that you're taking a different
7 approach for the retail national chains than you are for the
8 independent pharmacies, did they say that's not proper?

9 **A.** No, they did not.

10 **Q.** Do you recall being asked questions yesterday about
11 giving customers notice as they came near to their
12 thresholds?

13 **A.** Yes.

14 **Q.** Do you recall that you, in fact, did that for a period
15 of time as you started using thresholds and blocking?

16 **A.** Yes, for the retail national accounts, yes.

17 **Q.** All right. Let's go to Page 15, please. It says
18 "Blocking Orders." Do you see that?

19 **A.** Yes.

20 **Q.** And just to walk through the main headings, it says
21 "System blocks orders that exceed threshold, no override at
22 local level."

23 I want to focus on the third one, "Customer
24 Notification. Alert customer approaching threshold."

25 Do you see that?

1 **A.** Yes, I do.

2 **Q.** My question to you, sir, is when you were asked those
3 questions yesterday about whether you gave notice to
4 customers as they came near their threshold, did you tell
5 the DEA that you were going to be doing that?

6 **A.** Yes. It states it here.

7 **Q.** Do you recall any reaction they had to that?

8 **A.** I don't recall any reaction, no.

9 **Q.** Why were you giving those notifications?

10 **A.** To a customer?

11 **Q.** Yes.

12 **A.** To alert that customer that they were approaching that
13 threshold, to give them time to assess whether they wanted
14 to submit the Threshold Change Request, and also not to
15 cause any unduly blocking of necessary orders that they may
16 need to place in the future.

17 **Q.** During this period of time, were you still figuring out
18 the right level of thresholds for your customers?

19 **A.** Yes, we were. The program was only six months old at
20 this time.

21 **Q.** As you became more confident in your thresholds over
22 time and had more experience with them, did there come a
23 point in time where you stopped providing that notice to
24 customers that they were nearing their threshold?

25 **A.** Yes, that is correct.

1 **Q.** All right. Last point on this document. I want to
2 come back to this idea about less suspicious order reporting
3 and whether you had discussions about that with the DEA.

4 Would you mind turning with me to Page 16 of this
5 document, please?

6 If you could just recall the conversation you and I had
7 about the CSMP and, remember, you told us what Level I
8 review was, Level II review was, Level III review was?

9 **A.** Yes, I do.

10 **Q.** In this presentation to the DEA in November, 2008, did
11 you present to the DEA this is what Level I is, this is what
12 Level II is, this is what Level III is?

13 **A.** Yes, we did.

14 **Q.** Did you make it clear to the DEA the first level at
15 which you would block orders?

16 **A.** Yes.

17 **Q.** And where was that?

18 **A.** The block occurred at Level I.

19 **Q.** Okay, if we could just highlight that, please.

20 I want to focus on when you treated orders as
21 suspicious and reported to the DEA. Did you tell the DEA
22 the level at which you would treat orders as suspicious and
23 report them to the DEA?

24 **A.** Yes.

25 **Q.** Where was that?

1 **A.** That was identified in Level III.

2 **Q.** Okay. So from this presentation, did you tell the DEA
3 that there would be orders that would be blocked but not
4 reported as suspicious because they didn't make it to Level
5 III?

6 **A.** Yes.

7 **Q.** Did the DEA tell you that they disagreed with that?

8 **A.** No, they did not.

9 **Q.** I'd like to turn to another document.

10 MR. SCHMIDT: May I approach, Your Honor?

11 THE COURT: Yes, you may.

12 THE WITNESS: Thank you.

13 BY MR. SCHMIDT:

14 **Q.** This is a document labeled MC-WV-397. It looks
15 like it's got a similar cover page to the one we just
16 looked at. It says "DEA Discussion Document." This
17 time it's dated July 31st, 2008. Have you seen this
18 document before?

19 **A.** Yes, I have.

20 MR. SCHMIDT: We move this document into evidence,
21 MC-WV-397.

22 THE COURT: Any objection?

23 MR. RAFFERTY: No objection Your Honor.

24 THE COURT: It's admitted.

25 BY MR. SCHMIDT:

1 Q. All right. Do you recognize this as another
2 presentation to the DEA about your CSMP?

3 A. Yes, I do.

4 Q. And this covers many of the same points we've been
5 talking about, so I'm not going to go through them again.
6 I'll touch on them very quickly.

7 Do you see on Page 6, does this explain to the DEA how
8 you would set thresholds?

9 A. Yes, it does.

10 Q. Does it identify that there would be one approach for
11 your independents and another at the end for your retail
12 chains?

13 A. Yes, it does.

14 Q. If we go to Page 9, does that describe how you would
15 block orders?

16 A. Yes, it does.

17 Q. Does it again tell the DEA this point that there would
18 be customer notification, alert customer approaching
19 threshold?

20 MR. ACKERMAN: Objection, foundation. Your Honor,
21 he's testified he's seen document. He hasn't testified that
22 this document was actually presented to the DEA.

23 MR. SCHMIDT: I think he has.

24 THE COURT: You can ask him if it was, Mr.
25 Schmidt.

1 BY MR. SCHMIDT:

2 **Q.** Was this presented to the DEA to your knowledge?

3 **A.** Yes. This presentation was given by Don Walker to DEA
4 at Washington headquarters. And this is the document that I
5 would have used to create this presentation given four
6 months later at the local Delran distribution center to the
7 DEA field office.

8 THE COURT: Okay, overruled.

9 BY MR. SCHMIDT:

10 **Q.** Thank you, Mr. Oriente.

11 Here's what I want to focus on, if we go to Page 10,
12 Level I review; Page 12 -- Page 11, Level II review; Page
13 12, Level III review. Do you have those there in front of
14 you?

15 **A.** Yes, sir.

16 **Q.** Does the Level I description on Page 10 indicate that
17 orders would be blocked at that level?

18 **A.** No, it does not. Oh, I'm sorry, blocked, yes.

19 **Q.** Okay. Is there any reference to treating the orders as
20 suspicious and reporting it to the DEA on Page 10, Level I;
21 Page 2, Level II; Page 11, Level II?

22 **A.** I'm sorry. Could you repeat the question?

23 **Q.** Fair request. I bungled it.

24 Is there any reference on Page 10, Level I review, or
25 Page 11, Level II review, McKesson treating the orders as

1 suspicious and reporting them?

2 **A.** No, there is not.

3 **Q.** Where does that appear for the first time in terms of
4 these three levels?

5 **A.** On the third bullet of the Level III review.

6 **Q.** Is that the stage consistent with your CSMP where the
7 order would be treated as suspicious and reported?

8 **A.** Yes, it does.

9 **Q.** Look with me, if you would, at Page 13, please. It
10 says at the top McKesson is prepared to stop excessive
11 purchases reporting to local field office. Do you see that?

12 **A.** Yes. It's clearly stated.

13 **Q.** Does that relate in any way to this first item about
14 infrequent suspicious order reporting?

15 **A.** Yes, it's basically the same thing.

16 **Q.** Was that something you were telling DEA?

17 **A.** Yes, they were informed.

18 **Q.** All right. I want to do one more document from this
19 time period with you if I could.

20 MR. SCHMIDT: And, Your Honor, this is the 2008
21 settlement agreement from yesterday. We obviously objected
22 to its admission. If I may preserve that objection on a
23 rolling basis, but now that it's in nevertheless examine on
24 that briefly.

25 THE COURT: All right. Go ahead.

1 MR. SCHMIDT: Thank you. May I approach?

2 THE WITNESS: Thank you.

3 BY MR. SCHMIDT:

4 Q. Why don't we put this up on the screen, Exhibit
5 P-23733.

6 Do you remember being asked questions about this
7 document yesterday, the May 2nd, 2008, settlement between
8 the DEA and McKesson?

9 A. Yes, I do.

10 Q. I want to direct you to two separate provisions in this
11 document.

12 First, can we go to Page 2?

13 Heading 2 down at the bottom of the page states, "This
14 agreement is neither an admission by McKesson of liability
15 or of any allegations made by DEA in the orders and
16 investigations, nor a concession by DEA that its allegations
17 in the orders and investigations are not well founded."

18 Do you see that?

19 A. Yes, that's written here.

20 Q. Did you have that understanding that this is how
21 McKesson viewed that agreement as neither an admission of
22 liability or of the allegations made by DEA?

23 A. That was my understanding.

24 Q. Let's go to Page 6 of this document. Well, actually,
25 let's go to Page 3, please.

1 If you look on the screen or on the document, do you
2 see where it says "Obligations of McKesson"?

3 **A.** Yes.

4 **Q.** And it continues through for a few pages. Do you see
5 that?

6 **A.** Yes.

7 **Q.** And then on Page 5, if we can go back to Page 5, it
8 says "Obligations of DEA." Do you see that?

9 **A.** Yes.

10 **Q.** I want to look at one of the obligations of the DEA on
11 Page 6, please.

12 If we look at the top of Page 6, do you see a
13 Subsection (e)?

14 **A.** Yes, I do.

15 **Q.** I want to read you this language and ask you a couple
16 questions about it.

17 "Within 150 days of the effective date of this
18 agreement, but not earlier than 90 days after the effective
19 date of this agreement, DEA shall conduct reviews of the
20 functionality of McKesson's diversion compliance program,"
21 and calls those compliance reviews, "at up to eight
22 distribution centers of McKesson."

23 Do you see that?

24 **A.** Yes.

25 **Q.** Are you familiar with whether those compliance reviews

1 under this agreement actually happened?

2 **A.** Yes, I believe they did.

3 **Q.** And if we look at what the DEA is reviewing in these
4 compliance reviews, do you see that parenthetical quote
5 about compliance reviews?

6 **A.** Yes.

7 **Q.** Right before that it says, "DEA shall conduct reviews
8 of the functionality of McKesson's diversion compliance
9 program."

10 Do you know what McKesson's diversion compliance
11 program was at this point in time?

12 **A.** Yes. It would have been the CSMP.

13 **Q.** Is that your understanding of what these diversion --
14 these compliance reviews were doing was reviewing the
15 functionality of McKesson's CSMP?

16 **A.** Yes, that was my understanding.

17 **Q.** Now, you mentioned that you had an understanding they
18 occurred. Let's look at the next paragraph, please. I'll
19 read the first sentence and then ask you some questions
20 about it.

21 It says, "The compliance reviews will be deemed
22 satisfactory unless DEA determines that one or more of the
23 facilities being inspected has," and then it lists three
24 things. Do you see that?

25 **A.** Yes.

1 Q. What is your understanding of the facilities that were
2 inspected, focusing on that language?

3 A. That they all passed the inspection.

4 Q. What, what are the facilities? What is that referring
5 to? What facilities is it talking about? If it helps to
6 look back in the prior --

7 A. Yeah, it would.

8 Q. Let's go back to the prior paragraph.

9 A. Which one was listed?

10 Q. It actually list them all. But do you see it
11 references up to eight distribution centers?

12 A. Yes.

13 Q. Okay. Is it your understanding, if we go to the next
14 paragraph, that "facilities" is referencing distribution
15 centers?

16 A. Yes, it would be.

17 Q. Okay. So let's go to (f) again, please. And the
18 criteria it gives is they will be deemed satisfactory unless
19 DEA determines, one, quote, failed to maintain effective
20 controls against diversion regarding the distribution of any
21 controlled substance; two, quote, failed to detect and
22 report to DEA suspicious orders of controlled substances;
23 or, three, quote, failed to meaningfully investigate new or
24 existing customers regarding the customer's legitimate need
25 to order or purchase controlled substances."

1 Do you see that language?

2 **A.** Yes, that is written there.

3 **Q.** Were these compliance reviews being conducted during
4 this window when you were giving these presentations to the
5 DEA, told them about blocking, about greater diligence, and
6 about less frequent suspicious order reporting?

7 **A.** Yes, that is correct.

8 **Q.** Do you have an understanding as to whether the
9 distribution centers who were subject to these compliance
10 reviews all passed?

11 **A.** Yes. It's my understanding that all eight passed.

12 **Q.** And to be clear, if we go back to that first paragraph
13 (e) where it references DEA conducting reviews of the
14 functionality of McKesson's diversion compliance program at
15 CSMP, would the CSMP itself have been available to DEA
16 during these compliance review inspections?

17 **A.** Yes, it would have.

18 THE COURT: Was Washington Court House facility
19 one of the facilities they selected?

20 THE WITNESS: I, I don't know. I know that, as
21 here, it's Lakeland, Landover, and Conroe, and then five
22 others. I'm not aware that Washington Court House was one
23 of those five, sir.

24 THE COURT: Okay. You don't know whether it was
25 or it wasn't?

1 THE WITNESS: That is correct, Your Honor.

2 BY MR. SCHMIDT:

3 Q. All right. Let's jump ahead.

4 MR. SCHMIDT: If I could just have one moment,
5 Your Honor.

6 (Pause)

7 MR. SCHMIDT: Your Honor, while I'm having a
8 document pulled, I'm next going to show the witness the 2017
9 settlement he was shown yesterday over our objection just
10 with the request that we preserve our objection to its
11 admission --

12 THE COURT: All right.

13 MR. SCHMIDT: -- on a running basis.

14 And Your Honor might recall -- counsel will recall that
15 when you introduced this, I said we would ask for a copy to
16 introduce the exhibit with the appendices. I'm going to go
17 ahead and move that version in now which is a different
18 version from the plaintiffs' list which is P-1320.

19 May I approach and pass that out if I may?

20 THE COURT: Yes.

21 THE WITNESS: Thank you.

22 MR. SCHMIDT: And just with that preservation of,
23 of the objection generally, I move P-13 into evidence which
24 is what was previously marked but just with the agreement we
25 had about attaching the appendices.

1 THE COURT: Any objection to this?

2 MR. ACKERMAN: This one looks like it starts with
3 Appendix B.

4 So, again, Your Honor, this might be one of those
5 things that Mr. Schmidt and me and Mr. Rafferty can work out
6 in the middle of, or at the lunch break just to figure out
7 whether these pages are in the right order or not. They may
8 not be.

9 MR. SCHMIDT: I'll represent that they are. This
10 came from an exhibit that your side marked.

11 MR. ACKERMAN: Uh-huh.

12 MR. SCHMIDT: I'll confess I don't know why it has
13 Appendix B. I think it was probably pulled from
14 attachments. I'm happy to rip out Appendix B because it's
15 irrelevant to the purpose and we can treat the rest of the
16 document --

17 MR. ACKERMAN: I see. I see. So the first page
18 here can come off. So I think that's fine.

19 MR. SCHMIDT: If I may, Your Honor, and we can
20 submit a new copy to the Court after. We will remove the
21 first page of what I previously requested be marked as
22 Exhibit B -- as Exhibit P-13 and, instead, request that we
23 move in Exhibit P-13 from pages 2 through 67.

24 THE COURT: So this -- you're substituting a
25 different Appendix B? Is that what --

1 MR. SCHMIDT: No. What I'm doing is two things:
2 Ripping off the first page which I think this was just
3 attached to some other document. So the first page goes
4 away. And then --

5 THE COURT: Is that the page that says Appendix B?

6 MR. SCHMIDT: Yes. That can just come off.

7 THE COURT: That that just comes off?

8 MR. SCHMIDT: Yes, please.

9 THE COURT: All right.

10 MR. SCHMIDT: And then the rest of the document is
11 the same as what was introduced yesterday with the addition
12 of appendices to the actual settlement agreement itself.

13 THE COURT: Are you -- do you have any objection
14 to that, Mr. Ackerman?

15 MR. ACKERMAN: No, Your Honor.

16 THE COURT: Okay. It's admitted.

17 BY MR. SCHMIDT:

18 **Q.** Do you recognize this as the settlement agreement
19 you discussed with plaintiffs yesterday?

20 **A.** Yes.

21 **Q.** I want to focus on something on the first page. If we
22 look at the paragraph on the first page, do you see it
23 references an event on March 12, 2013, where DEA executed an
24 administrative inspection warrant at McKesson Aurora?

25 **A.** Yes, I see that.

1 Q. What is McKesson Aurora?

2 A. McKesson Aurora is one of the distribution centers
3 that's in Aurora, Colorado.

4 Q. Do you know if McKesson Aurora regularly serviced West
5 Virginia?

6 A. No, it would not.

7 Q. Do you have any understanding of whether this
8 inspection that's referenced on this first page is what
9 ultimately led to this settlement agreement?

10 A. Yes, that is my understanding.

11 Q. Okay. And I want to ask you about changes that were
12 made -- well, let me ask you a question first. Following
13 that inspection, the guidance McKesson received from that
14 2013 inspection, did McKesson make further changes to its
15 policies?

16 A. Yes, it did.

17 Q. I'll come back to that. But did that start shortly
18 after the inspection in 2013 or did McKesson wait until this
19 was finalized in 2017 to start those changes?

20 A. No, they didn't wait until it was settled. They made
21 the changes as soon as they were identified.

22 Q. I'll come back to those I suspect after the lunch
23 break, but I just want to quickly see if I can get through
24 this document before we go to the lunch break.

25 Let's look at Page 3 of this document. And you will

1 recall --

2 If we cull out midway down that paragraph, "McKesson
3 acknowledges."

4 You will -- do you recall being asked questions about
5 this language?

6 **A.** Yes, I do.

7 **Q.** All right. It says, "McKesson acknowledges that at
8 various times during the January 1st, 2009, period up
9 through and including the effective date of this agreement,
10 the covered time period, it did not identify or report to
11 DEA certain orders placed by certain pharmacies which should
12 have been detected as suspicious by McKesson based on the
13 guidance contained in the DEA letters about the requirements
14 set forth in --" then there's two, the regulation and the
15 statute cited. Do you see that?

16 **A.** Yes.

17 **Q.** So just a few questions about that language.

18 Do you know if -- when it refers to certain orders
19 placed by certain pharmacies which should have been detected
20 by McKesson as suspicious, do you know if that refers to any
21 pharmacies or orders in Huntington/Cabell?

22 **A.** No, it does not.

23 **Q.** Do you understand this language to be focused
24 specifically on suspicious order reporting?

25 **A.** Yes.

1 **Q.** Would you have been blocking orders even if they
2 weren't reported as suspicious during this time period that
3 exceeded your thresholds?

4 **A.** Yes, the orders would have been blocked.

5 **Q.** Does this language say anything about failing to block
6 orders?

7 **A.** No, it does not.

8 **Q.** Does this language say anything about McKesson
9 acknowledging that it had pharmacy customers that were
10 engaged in diversion?

11 **A.** No, diversion is not mentioned.

12 **Q.** Does that language say anything about McKesson not
13 meeting its ARCOS reporting obligations?

14 **A.** No, it does not.

15 MR. SCHMIDT: May I have one moment to confer,
16 Your Honor?

17 THE COURT: Yes.

18 (Pause)

19 MR. SCHMIDT: I'll try to keep the conference
20 short, Your Honor.

21 That concludes what I have on, on this document. I'm
22 about to switch to a new topic.

23 THE COURT: Well, this might be a good time to
24 quit. I've got to take a plea and we need to clear out the
25 courtroom and so forth. So we'll be in recess until 2:00.

1 You can come back at 2:00.

2 THE WITNESS: Okay. Thank you, Your Honor.

3 (Recess taken at 11:56 a.m.)

4 THE COURT: Mr. Oriente, you can resume the
5 witness stand, sir, wherever you are.

6 MR. SCHMIDT: He just stepped out in case there
7 were early matters to deal with.

8 THE COURT: All right, Mr. Schmidt.

9 MR. SCHMIDT: Yes, Your Honor. May I proceed?

10 THE COURT: Yes, please.

11 MR. SCHMIDT: Thank you.

12 BY MR. SCHMIDT:

13 **Q.** Mr. Oriente, I want to pick up with where we were on
14 the board in terms of changes over time and orient you back
15 to that inspection at the Arora facility we talked about in
16 2013. And I think you've said before the lunch break, or
17 let me ask you, at that point in time, did McKesson
18 undertake further changes to its processes?

19 **A.** Yes, it did.

20 **Q.** Specifically, did it make changes in the volume of
21 suspicious orders that it reported?

22 **A.** Yes, it did.

23 **Q.** And between these two poles of frequent and infrequent,
24 how would you characterize the changes in reporting again in
25 2013?

1 **A.** It was frequent and involved all suspicious orders.

2 **Q.** Did it cover everything that you were blocking?

3 **A.** Yes, it would have.

4 **Q.** All right. Did the blocking itself continue?

5 **A.** Yes. Full blocking continued.

6 **Q.** Did that include blocking orders that appeared likely
7 to be diverted?

8 **A.** Yes, it would have.

9 **Q.** And we talked about the diligence for some length that
10 you and your colleagues undertook between 2008 and 2013.
11 Yesterday, you were asked about enhancements to your CSMP in
12 this time frame. Did that include enhancements to the
13 diligence?

14 **A.** Yes, it did.

15 **Q.** I'd like to illustrate a little bit for the Court what
16 we were talking about. Before I do, obviously, anytime you
17 improve something you can ask, well, why weren't you doing
18 that earlier. In this time frame, this 2008 to 2013 time
19 frame, did you have a view one way or the other as to
20 whether you were doing what the DEA wanted you to do?

21 **A.** It was McKesson's understanding that we were, yes.

22 **Q.** Did that come from things we talked about before lunch
23 like compliance reviews, the presentations to the DEA?

24 **A.** Yes. Compliance reviews, presentations, cyclical
25 audit, things of that nature.

1 **Q.** When you made changes in 2013, were you making changes
2 because you had a new understanding of what the DEA wanted?

3 **A.** Yes, we did.

4 **Q.** Was there -- if we think back to that suspicious order
5 regulation that we looked at that was quoted in one of your
6 early manuals, do you remember that, unusual size,
7 frequency?

8 **A.** Yes, I do.

9 **Q.** Was there any change to that regulation or any change
10 to the guidance you were receiving?

11 **A.** There was no change in the regulation. There was
12 change in the guidance.

13 **Q.** Let's talk about how you responded, how McKesson
14 responded to that change in guidance in a little more
15 detail, and I would like to go to a document that you were
16 shown yesterday, P-13737, which is in evidence.

17 And while we look for it, because it's in evidence, I
18 will ask that it be put up on the screen. I guess it
19 already is.

20 Do you remember being shown this e-mail yesterday dated
21 November 1st, 2013 from Ellie Rio to a number of people?
22 And if I recall correctly, you're about seven or eight lines
23 down.

24 **A.** Yes. I see my name.

25 **Q.** And if we scroll to the next page, please, Page 4,

1 actually, do you see that attached to this e-mail is a slide
2 deck from November 1st, 2013 regarding the Controlled
3 Substance Compliance Program? Do you see that?

4 **A.** Yes, I do.

5 **Q.** And to finish orienting us to this document, if we go
6 to Page 2 of the document, on the bottom half you were shown
7 this language sent on behalf of Don Walker. It references
8 we are in the process of implementing an enhanced suspicious
9 Order Monitoring Program and then it looks like there's
10 training on that program; is that correct?

11 **A.** Yes, that is correct.

12 **Q.** And that enhanced Suspicious Order Monitoring Program,
13 does that include undertaking these steps we have in this
14 2014 forward time period?

15 **A.** Yes, it would have.

16 **Q.** Okay. So, let me just pass this on to you and to the
17 Court so you have it for reference if you want it.

18 **A.** Thank you.

19 **Q.** Thank you. Why don't you go back to Page 4. Page 5 is
20 background. Do you see that?

21 **A.** Yes.

22 **Q.** Page 6 is Controlled Substance Compliance Program. Do
23 you see that?

24 **A.** Yes, I do.

25 **Q.** And Page 7 is the page you were asked about,

1 significant enhancements to CSMP. Do you see that?

2 **A.** Yes.

3 **Q.** All right. And this page references more sophisticated
4 data analysis, more rigorous process for threshold change
5 requests, reinforcement of decision making within the
6 Regulatory Affairs Team and corresponding investments to
7 expand the Regulatory Affairs Team. Can you give us an
8 overview as you understand it of what those changes
9 involved?

10 **A.** Yes. The first one was new and enhanced Data Reports
11 were created for McKesson's regulatory use. The second
12 bullet was we looked at threshold changes differently from
13 this point forward. And the third one was the decision
14 making was -- it got additional reviews and then there was
15 increase in the Regulatory Affairs Team and head count.

16 **Q.** And did that increase, in fact, happen?

17 **A.** Yes, it did.

18 **Q.** Can you tell a little bit about the background of some
19 of those new people that you brought in?

20 **A.** Yes. Primarily, their background was experience as DEA
21 diversion investigators. That's where the majority came.
22 Some came from State Attorney General Offices.

23 **Q.** Why did you hire people with those kinds of
24 backgrounds?

25 **A.** They had the knowledge and experience in diversion.

1 Q. Was part of this program, this step we've talked about,
2 reporting suspicious orders based on which orders you're
3 blocking?

4 A. Yes. It would have reported every blocked order that
5 attempted to go above a threshold.

6 Q. And was additional training part of this process?

7 A. Yes, it was.

8 Q. In fact, is this document itself part of that training?

9 A. Yes, it would have been.

10 Q. Okay. I'd like to show you a slightly later version of
11 your CSMP just so we have it after many of these changes
12 have been made. Are you aware of whether McKesson continued
13 to update its CSMP after 2014?

14 A. Yes. It would have been updated.

15 Q. Can you tell us what this document is, sir?

16 A. Yes. This would be the -- what's referred to as the
17 ISMC Controlled Substance Monitoring Program document, their
18 operating manual involving the independent stores.

19 Q. Are you familiar with this manual from your work at
20 McKesson?

21 A. Yes, I am.

22 MR. SCHMIDT: Your Honor, we'd move this document
23 into evidence, MCWV-199.

24 THE COURT: Any objection?

25 MR. RAFFERTY: No objection, Your Honor.

1 THE COURT: It's admitted. MCWV-199 is admitted.

2 MR. SCHMIDT: Thank you.

3 MR. SCHMIDT: Let's put it up on the screen,
4 please, and we can probably go ahead and replace this
5 screen, too, because I'm done with that board now. I don't
6 know if that's feasible.

7 BY MR. SCHMIDT:

8 Q. But either way, do you see that this says ISMC
9 Controlled Substance Monitoring Program Operating Manual and
10 it's dated May, 2015 down at the bottom? Do you see that?

11 A. Yes, I do.

12 Q. So, let me just -- we're not going to go through this
13 in the same detail we went through the other policies, but I
14 want to show you just a few features of it. Can we go to
15 Page 4, please?

16 In the second half of the page, it lists the core
17 elements of CSMP. It looks like it's reviewing customers,
18 monitoring customers, blocking orders, conducting initial
19 due diligence, determining when a customer is no longer
20 eligible. Do you see those?

21 A. Yes, I could.

22 Q. Are those steps you've been performing all the way back
23 to the 2008 time frame?

24 A. Yes. They would have been established in 2008.

25 Q. Just at a high level, what was changing here?

1 **A.** It would have been the additional reporting of
2 suspicious orders.

3 **Q.** Was there additional diligence, as well?

4 **A.** Yes.

5 **Q.** All right. Let's look at Page 6, please. And,
6 unfortunately, this is not a great copy, but if we could
7 blow up that organizational chart on the bottom half of the
8 page.

9 Do you understand this to refer to the changes we
10 talked about a moment ago in terms of the number of
11 Regulatory Affairs -- Regulatory Affairs employees?

12 **A.** Yes.

13 **Q.** And it's hard to see the numbers on there, but as I go
14 through and count them, it's somewhere in the order of 25 or
15 26. Does that -- is that consistent with your recollection?

16 **A.** At this time that this was printed, yes.

17 **Q.** All right. Let's look ahead to Page 18. Is this that
18 red flags document we were talking about earlier? Is that
19 incorporated as part of your CSMP?

20 **A.** Yes, it was.

21 **Q.** And let's look ahead to Page 41, please. Do you see
22 the Suspicious Order Monitoring and Reporting heading?

23 **A.** Yes.

24 **Q.** It says under heading 7.2, orders with a V code omit
25 are compiled in a Suspicious Order Report, which is

1 generated at the end of each day. The report is
2 automatically transmitted to DEA Headquarters at the end of
3 each day through DEA's website. Do you see that?

4 **A.** Yes, I do.

5 **Q.** What is an order with a V code omit?

6 **A.** The V code omit specifically -- omits were given an
7 Alpha code. The V code omit was for a threshold excursion.

8 **Q.** Exceeding the threshold?

9 **A.** Attempting to, yes.

10 **Q.** Attempting to?

11 **A.** Yeah.

12 **Q.** Okay. And so, is this the language that implements
13 what we had on the board about reporting all orders that get
14 blocked because they go above a threshold?

15 **A.** Yes. This is describing that process.

16 **Q.** I'm going to show you one more.

17 **A.** Thank you.

18 **Q.** You're welcome.

19 Do you recognize this document I've put in front of
20 you, MCWV-243?

21 **A.** Yes, I do.

22 **Q.** What is this document?

23 **A.** This is the document outlining our process for
24 Controlled Substance Monitoring Program for our RNA, or
25 retail national accounts, customers.

1 MR. SCHMIDT: Your Honor, we move MCWV-243 into
2 evidence.

3 THE COURT: Any objection to 243?

4 MR. RAFFERTY: No objection, Your Honor.

5 THE COURT: Admitted.

6 BY MR. SCHMIDT:

7 Q. So, just to be sure -- can we put that up on the
8 screen, please? And just to be sure I understand what we're
9 looking at here, can you tell us the date of this document?

10 A. Yes. It has an effective date of April 17th, 2018.

11 Q. Is this specific to a certain type of customer for
12 McKesson?

13 A. Yes. This would have applied to the national chains.

14 Q. If we scroll up the page a bit, is that -- a little
15 more, is that what the reference -- where do you see --
16 where does this tell you that this is for the national
17 chains?

18 A. Under the RNA acronym.

19 Q. Why did McKesson put together a program specific for
20 RNA customers?

21 A. Again, RNA customers are different from independent
22 customers. RNA chains also conduct due diligence and have
23 regulatory departments that they, themselves, oversee their
24 pharmacies.

25 Q. Are you familiar with a company that McKesson has

1 worked with more recently called Analysis Group?

2 **A.** Yes, I am.

3 **Q.** What is it that Analysis Group does? Well, actually,
4 let me ask you first, what is Analysis Group as you
5 understand it?

6 **A.** Analysis Group is an analytics company. They take
7 data, run it through statistical models, and generate an
8 outcome so that that data has meaningful information and
9 action can be used to -- once that determination is made.

10 **Q.** Does McKesson now work with AGI as part of its
11 Controlled Substance Monitoring Program?

12 **A.** Yes, they currently do.

13 **Q.** And what, at a general level, does AGI do with
14 McKesson?

15 **A.** On a monthly basis, AGI will review customer purchases,
16 previous customer purchases, review geographic areas that
17 the customers are in, and will set new thresholds each month
18 relative to the customers' previous purchases.

19 **Q.** Do you know if those thresholds can go up and can go
20 down?

21 **A.** Yes. It's an automatic process so that thresholds can
22 go down, as well as increase. If a customer's business is
23 increasing, adjustments can go up. As a customer's business
24 decreases, the model will reduce the thresholds.

25 **Q.** And you made reference to a model. Earlier, you talked

1 about statistics. I'm not going to ask you to get into the
2 details of those, but are you familiar that they use
3 something called the Tukey Box Plot method?

4 **A.** Yes, I am.

5 **Q.** Are you the one who runs those numbers?

6 **A.** No, I do not.

7 **Q.** Got it. Do you understand whether the way they set the
8 model is static or dynamic?

9 **A.** It would be dynamic.

10 **Q.** And what does that mean to your understanding?

11 **A.** That it would take into account the specific customer,
12 but also take into account the geographic area, as well as
13 looking at sort of a rating scale of the most abused base
14 codes. There's a significance to the different base codes
15 assigned.

16 **Q.** Do you know whether it incorporates comparing customers
17 to similar customers?

18 **A.** Yes, it would. That's one of the statistical modelings
19 that they do.

20 **Q.** Roughly speaking, do you know how long the company has
21 been working with AGI to help set its thresholds?

22 **A.** I believe it started around 2015, if I -- you know, to
23 my recollection, around 2015.

24 **Q.** Okay. Now, I want to shift gears and cover a few of
25 the points you were asked about yesterday and I want to

1 start with retail national accounts and, specifically, Rite
2 Aid. Has there been a period of time when you have focused
3 largely on retail national accounts in your work?

4 **A.** Yes.

5 **Q.** Since when have you done that?

6 **A.** In 2014, I moved into a group that was specifically
7 assigned to monitor retail national accounts.

8 **Q.** And is the way you interact with retail national
9 accounts the same or different than how you interact with
10 individual pharmacies?

11 **A.** Oh, it would be very different.

12 **Q.** Can you tell me how that's different and why that's
13 different?

14 **A.** Yes. When I was in the northeast region, I would
15 interact with specific store owners and Pharmacists in
16 Charge on the Independent -- or the ISMC group of customers.
17 In the retail national account position, I deal with
18 corporate regulatory people at each of the chains would be
19 the main difference.

20 **Q.** Do you understand that they themselves -- do you have
21 an understanding as to whether the retail chains are
22 themselves registered as distributors in terms of when they
23 distribute to themselves?

24 **A.** They would be. If they do some self-distributing, they
25 would have to be registered as a distributor.

1 **Q.** Do you know from your discussions with the DEA whether
2 the DEA knew about that difference in the way you dealt with
3 independent pharmacies and chain pharmacies?

4 **A.** Yes. It was my understanding they knew that
5 difference.

6 **Q.** Did we see some of that in the presentations we looked
7 at earlier to the DEA in 2008?

8 **A.** Yes. It was -- to my understanding, what I saw, it was
9 spelled out in the presentations.

10 **Q.** Did you -- even though you would deal with the national
11 office, did you still conduct diligence regarding individual
12 chain stores?

13 **A.** Yes. When it was required, I would go visit a --
14 excuse me. I would go visit a retail national account
15 pharmacy, yes.

16 **Q.** For example, were there ever occasions where you
17 rejected threshold change requests on individual chain
18 stores?

19 MR. ACKERMAN: Your Honor, objection. Could we
20 have a time frame for these questions?

21 THE COURT: Yes. Can you put a time frame on it,
22 Mr. Schmidt?

23 BY MR. SCHMIDT:

24 **Q.** The time period when you worked with --

25 MR. SCHMIDT: Of course.

1 BY MR. SCHMIDT:

2 Q. In the time period where you worked with retail chains,
3 were there occasions where you would reject threshold
4 increases for individual retail chain stores?

5 A. It would have started in 2008.

6 Q. Okay.

7 A. Because I had Rite Aid from 2008 to present.

8 Q. Okay. And has that been periodic throughout that time?

9 A. Yes, it has been.

10 Q. Were the chain stores different from each other in
11 terms of your interactions with them and their programs?

12 A. Yes, they -- they would be.

13 Q. Let me show you a document on that. This is a document
14 that was marked into evidence yesterday, P-42796.

15 MR. SCHMIDT: May I approach, Your Honor?

16 THE COURT: Yes.

17 THE WITNESS: Thank you.

18 BY MR. SCHMIDT:

19 Q. If you look at the first line, do you -- in the first
20 e-mail, it is an e-mail to you at the end of this chain in
21 October, 2008. Do you see the reference to CVS?

22 A. Yes, I do.

23 Q. And if you look through the document, do you see
24 various references to CVS in this document?

25 A. Yes. It's all CVS related.

1 **Q.** Let me show you something we didn't have a chance to
2 look at yesterday. If you look at the end of the first
3 paragraph, do you see where it says CVS is really different
4 from the other RNA? Do you see that?

5 **A.** Yes, I do.

6 **Q.** What does that mean?

7 **A.** CVS was also a self-distributor to their pharmacies
8 besides using McKesson. That was probably the biggest
9 difference.

10 **Q.** Okay. When you say CVS is really different from the
11 other RNA, was Rite Aid an RNA?

12 **A.** Yes. Rite Aid was considered an RNA customer.

13 **Q.** Were there differences in how you interacted with CVS
14 versus Rite Aid?

15 **A.** Yes, there were.

16 **Q.** Now, how long is it that you've worked with Rite Aid to
17 monitor for diversion?

18 **A.** Since 2008.

19 **Q.** You were, in fact, asked some questions yesterday about
20 Rite Aid objecting to your CSMP when it first came on-line
21 in 2008; do you recall that?

22 **A.** Yes, I do.

23 **Q.** Did you subject them to your CSMP?

24 **A.** Yeah. Although they had objections, they were still on
25 the program.

1 Q. Now, in the time since then, how frequently on average
2 would you have contact with Rite Aid?

3 A. I would say a few times a month.

4 Q. Do you know if they had their own internal team, their
5 own analogs doing what you were doing?

6 A. Yes, they did. They had their own Regulatory
7 Department.

8 Q. Did you work with those individuals personally?

9 A. Yes, I did.

10 Q. Do you know if they had their own set of policies and
11 procedures, some kind of analog McKesson CSMP for doing
12 their own monitoring of their stores?

13 A. Yes. Rite Aid had documented policies and procedures
14 on the filling of controlled substances.

15 Q. Did you come to a view from your interactions with Rite
16 Aid? We can take this down. Did you come to a view from
17 your interactions with Rite Aid as to whether they were
18 committed from what you could see to detecting and
19 preventing diversion?

20 A. Yes.

21 Q. What was that view?

22 A. My view was that Rite Aid was conducting their due
23 diligence and reviewing not only the pharmacy, but the
24 prescribers that were driving the prescriptions.

25 Q. Were there occasions where you raised concerns or

1 points that you had with Rite Aid with their team?

2 **A.** Yes, there was.

3 **Q.** From your perspective, how did they respond?

4 **A.** They would review those stores that McKesson identified
5 and Rite Aid would report back their findings to myself so
6 that, again, if it was a red flag, could it be resolved with
7 the additional information that Rite Aid would provide.

8 **Q.** Were there times where, on their own, they would come
9 to you with steps they were taking or concerns they might
10 have?

11 **A.** Yes. They would communicate with myself about that.

12 **Q.** Let me ask you about another topic. At one point near
13 the end of the day you were asked a question about the ratio
14 of controlled substances to other prescription drugs. Do
15 you remember being asked that question?

16 **A.** Yes, I do.

17 **Q.** And you were asked specifically about a ratio of
18 90 percent controlled substances, ten percent other
19 substances; do you remember that?

20 **A.** Yes, I do.

21 **Q.** Do you remember talking about, well, maybe we'd cut
22 that customer off?

23 **A.** Yes.

24 **Q.** Would you want to know all the facts about that
25 customer before making that decision?

1 **A.** Yes. The 90 percent would be one red flag. You would
2 dig deeper to find out why.

3 **Q.** Would that include looking at whatever you had in your
4 diligence file and whatever you had learned about how the
5 customer did business?

6 **A.** That would be one additional aspect. There would be
7 more than that, yes.

8 **Q.** Like what kind of things would you look at?

9 **A.** I would look at their threshold history throughout the
10 program. I would look at the latest questionnaire to make
11 sure it matched up to their business model. I may even
12 conduct a site visit, make a phone call to the pharmacy,
13 compare them to other customers to see why are they
14 different.

15 **Q.** Would it be relevant, for example, if they were a
16 specialty pharmacy that served customers like Hospices?

17 **A.** Yes. That would be a factor taken into consideration.

18 **Q.** Would it be relevant if there were specialty
19 compounding pharmacies that were purchasing a large amount
20 of their product from other sources?

21 **A.** Yeah. That would -- that would definitely be a factor.

22 **Q.** Would you look at what the absolute level per month of
23 their controlled substance purchases are?

24 MR. RAFFERTY: Your Honor -- oh, I'm sorry, Paul.

25 BY MR. SCHMIDT:

1 **Q.** The actual number per month submitted?

2 MR. RAFFERTY: Your Honor, this is a lot of
3 leading questions. I have to object. I mean, I understand
4 he's allowed to lead a little bit, but question after
5 question after question here has been blatantly leading.

6 THE COURT: Well, I'm going to overrule it and let
7 him get through this.

8 MR. SCHMIDT: Thank you, Your Honor.

9 THE COURT: This is cross. I think he can do some
10 leading.

11 Go ahead.

12 THE WITNESS: Would you repeat the question,
13 please?

14 BY MR. SCHMIDT:

15 **Q.** Sure. Would you look at the total monthly purchases to
16 see what the number of pills per month being purchased was?

17 **A.** Yes. That would be part of the review.

18 **Q.** For example --

19 THE COURT: You may have -- I may have missed
20 this, but if somebody like CVS self-distributed for part of
21 their purchases, would you have access to how many pills
22 they -- they -- for an individual pharmacy? Would you have
23 access to the number of pills that they shipped directly to
24 their pharmacies that you also sold to?

25 THE WITNESS: Not prior to 2019 when the ARCOS

1 data was made available to the wholesaler. From 2019 on to
2 today, yes. Prior to 2019, no, I would not have that
3 visibility to the amount that --

4 THE COURT: So, in setting your thresholds and the
5 monitoring for possible diversion, it seems to me that that
6 would be necessary information for you to have and you
7 wouldn't have it; is that right?

8 THE WITNESS: We could request that from CVS if we
9 were doing an additional review and felt that the controlled
10 percentage was growing. We could request their total
11 dispensing. So, we could get it that way, but it wasn't
12 available unless we asked CVS to provide it.

13 THE COURT: Would they give it to you if you asked
14 for it?

15 THE WITNESS: Yes, they would.

16 BY MR. SCHMIDT:

17 **Q.** And just to drill into the judge's question a little
18 bit more, in terms of the self-distribution, we've talked a
19 lot about oxycodone and hydrocodone. Did the chains,
20 generally speaking, distribute oxycodone?

21 **A.** No, they did not. That was a Schedule II drug and they
22 would come to McKesson for that.

23 **Q.** Until it was made into a Schedule II drug, did they
24 self-distribute hydrocodone?

25 **A.** Yes. They would have self-distributed it because it

1 was a Schedule III before the DEA made it a Schedule II.

2 **Q.** And did you take into account that they might be
3 self-distributing hydro, but not oxy, in setting your
4 relative thresholds for those two types of products?

5 **A.** Yes. For the oxy, they would have primary with
6 McKesson. And for hydrocodone, McKesson was a secondary
7 supplier or a backup supplier to -- if CVS or Rite Aid had
8 inventory issues where they could not supply their own
9 stores, they would then come to McKesson and ask us to
10 supply it to them. Their thresholds for hydrocodone would
11 have been set lower because we were the backup secondary
12 supplier for them.

13 **Q.** Last questions on this topic. If I told you a pharmacy
14 had 13,300 pills average per month in the year 2011,
15 oxycodone, does that stand out as high or low to you?

16 **A.** For me, it would stand out as low in the 2011 time
17 frame.

18 **Q.** If I told you they had 300 pills per month average in
19 2011 of hydrocodone, would that stand out high or low?

20 **A.** 300 pills would be very low.

21 **Q.** All right. You were asked some questions yesterday
22 about audits; do you recall that?

23 **A.** Yes.

24 **Q.** Do you have an understanding as to why McKesson has an
25 Audit Department that conducts periodic distribution center

1 audits?

2 **A.** Yes, I do.

3 **Q.** Will you share that with us?

4 **A.** Sure. McKesson obviously takes it very seriously to
5 the point that they sort of check the checker. So, the
6 audit team would come in and make sure that McKesson is
7 compliant in our responsibilities.

8 **Q.** Are these audits used as a means to enhance and improve
9 McKesson's programs and ensure compliance with them?

10 **A.** Yes, they would be.

11 MR. SCHMIDT: May I approach, Your Honor?

12 THE COURT: Yes.

13 THE WITNESS: Thank you.

14 MR. SCHMIDT: You're welcome.

15 BY MR. SCHMIDT:

16 **Q.** Exhibit 115 is the first of two audit documents that
17 you were shown yesterday that was admitted into evidence.
18 Do you recall being shown this document?

19 **A.** Yes, I do.

20 **Q.** What I'd like to do is go to Page 13. And it's Page 13
21 in the little numbering on the extreme bottom right corner.

22 **A.** I have it.

23 **Q.** Do you see that? And we also have it up on the screen
24 and can we call up three paragraphs that were shown
25 regarding individual distribution centers, Delran, Newcastle

1 and Washington Court House? Do you see that?

2 **A.** Yes, I see that.

3 **Q.** So, let me ask you first about Delran and Newcastle.

4 Did they regularly supply customers in Cabell County or
5 Huntington?

6 **A.** No, they did not.

7 **Q.** Am I correct in looking at all three that they refer to
8 forms not being completed?

9 **A.** Yes. All three mention forms.

10 **Q.** Do you see any finding in there that the actual review
11 work was not done, as opposed to the paperwork not being
12 filled out?

13 **A.** No, I do not.

14 **Q.** Let's look at an example. Can we pull up the full
15 Washington Court House finding? Do you see it says the
16 required Level I forms were not completed for all 19 omits
17 in July, 2010 and all 11 omits in November, 2010? Do you
18 see that? In addition, the omit report was not signed and
19 dated. Do you see that?

20 **A.** Yes, I do.

21 **Q.** Can you tell from this whether the omits were occurring
22 or not?

23 **A.** Yes, they would have been. They would have been
24 blocked orders.

25 **Q.** And was the Audit Department able to tell exactly how

1 many omits had occurred?

2 **A.** Yes, they would have been able to tell, and then look
3 for the paperwork.

4 **Q.** And so, is it correct that they're saying we can tell
5 the omits were done, we just don't have the paperwork?

6 **A.** That's what this is referring to, that the blocked
7 orders did occur. No shipments were made. It just was not
8 documented.

9 **Q.** Do you see any findings there about shipping orders
10 that should not have been shipped?

11 **A.** No, not at all.

12 **Q.** Do you see any findings there about diligence not being
13 conducted, as opposed to the paperwork not being conducted?

14 **A.** No.

15 **Q.** And if we could go back out to a separate part of the
16 page, if we could grab the right side of the screen from
17 action plan through action date. We see for the findings
18 we've been talking about, I think those are on the bottom
19 half and it looks like there's text in the action plan.
20 There's text in the action owner. And there's text in the
21 action date. Can you tell us what those mean?

22 **A.** Yes. The action plan would be the corrective action
23 plan to remedy the identified issue. The action owner,
24 Blaine Snider in the first case, was the Distribution Center
25 Manager of the Newcastle, Pennsylvania Distribution Center.

1 And then the action date as to when it would be completed
2 by.

3 **Q.** So, am I correct that by the time this report came out
4 there was an action plan to address this owner and an action
5 date for addressing it by?

6 **A.** Yes, that is correct.

7 **Q.** Let's go to Page 14, please. You were also asked about
8 this page under threshold change requests. And I believe
9 you were asked about Delran and Washington Court House. Do
10 you recall those? If we could call those up on Page 14.

11 **A.** Oops. My monitor went off. Oh, there it goes.

12 **Q.** Do you see that it references threshold change forms
13 not being on file?

14 **A.** For which DCs?

15 **Q.** For Delran -- for all three shown here? It identified
16 specific --

17 **A.** Yes. Yes. In the first two, I saw TCR but, yes, all
18 three.

19 **Q.** Does that mean that the threshold change work wasn't
20 being done?

21 **A.** No. It is no reflection on the review that the
22 regulatory director would have done.

23 **Q.** What does it mean?

24 **A.** That the TCR forms were not in the file when the audit
25 occurred.

1 **Q.** Okay. Let's go back in this document to Page 6,
2 please. I'm sorry. Yes, Page 6. And if we pull out that
3 first paragraph under Overall Conclusion, there was
4 discussion yesterday about the language starting at the
5 words Overall Results four lines down. Do you see where I'm
6 looking, Mr. Oriente?

7 **A.** Yes. It's just been highlighted. Thank you.

8 **Q.** Overall results of the audit indicate that the
9 distribution centers are not consistently completing and
10 maintaining the required documentation associated with
11 certain SOPs. Do you see that?

12 **A.** Yes, I do.

13 **Q.** Do you understand that to refer to some of the findings
14 we were just looking at?

15 **A.** Yes, it would reflect that.

16 **Q.** All right. Let's look at the rest of the sentence
17 before that, complete sentence, which includes the language,
18 quote, the U. S. Pharma Distribution Network maintains a
19 robust control environment and stringent standard operating
20 procedures. Do you see that finding?

21 **A.** Yes, I do.

22 **Q.** Is -- are those two ideas together consistent with this
23 point you've been telling us about, that their
24 documentations weren't false, but things like the blocking
25 were occurring?

1 **A.** Yes, they were.

2 **Q.** Now, let me just ask you one question about -- about
3 documents. Do you know under your retention policies at
4 McKesson whether, if you have a former customer, a former
5 pharmacy, you keep their CSMP file for all time?

6 **A.** I do not, no.

7 **Q.** Do you know under your retention policies whether, even
8 if it's a current customer, you keep their CSMP file 10, 15,
9 20 years ago?

10 **A.** No, I do not.

11 **Q.** Let's go to Page 1. I'm sorry. Let's go to the other
12 audit that you were shown.

13 MR. SCHMIDT: May I approach?

14 THE COURT: Yes.

15 THE WITNESS: Thank you.

16 MR. SCHMIDT: You're welcome.

17 BY MR. SCHMIDT:

18 **Q.** Do you recognize P-116 as the other audit you were
19 shown from November, 2012?

20 **A.** Yes. This was one that I was not copied on.

21 **Q.** Okay. You weren't -- we didn't get to see this
22 yesterday, but can you tell what the rating is in this
23 audit?

24 **A.** Rating? Let's see. Current was green, satisfactory;
25 and prior was yellow, needs improvement.

1 Q. Let's look at Page 4, please.

2 A. Okay.

3 Q. And let's look at the language under green,
4 satisfactory overall conclusion, that first paragraph. It
5 says based on the testing performed to meet our audit
6 objectives, we conclude that controls to on-board new
7 customers, assign and monitor thresholds, and report
8 suspicious orders to the DEA are effective. Do you see
9 that?

10 A. Yes, I do.

11 Q. Is that your understanding of where you stood at this
12 point in time?

13 A. Yes.

14 Q. And then it goes on to talk about the policies and
15 procedures could be improved. Do you see that?

16 A. Yes.

17 Q. And let's look at what you were shown yesterday in that
18 regard. If we go to Page 7, please, and let's blow up the
19 first two paragraphs under item 1, which you were asked
20 about yesterday. Am I correct that this, again, refers to
21 specific documents not being in the file they're supposed to
22 be in?

23 A. Yes. That is what it's referencing.

24 Q. Is there any finding here that the actual diligence was
25 not being conducted?

1 **A.** No. That does not say that the diligence was not
2 conducted.

3 **Q.** Okay. I want to go back just for a moment to the
4 document we were just looking at, Exhibit 115, Page 13,
5 please, that bullet in the lower left-hand corner, the item
6 on the lower left-hand corner, regarding those three
7 distribution centers.

8 Will you call that out, please, Delran, Newcastle,
9 Washington Court House in the lower left-hand corner,
10 please? Thank you.

11 And I want to just return to this idea one more time.
12 Do you see where it refers to the fact that there are omits
13 and it gives specific omit numbers?

14 **A.** Yes, I see that.

15 **Q.** Does that tell you that that blocking, those omits,
16 were occurring?

17 **A.** Yes. They would have been occurring. The blocking
18 would have taken place.

19 **Q.** And then, do you see that there are findings about not
20 having a form signed, a form signed, forms not being
21 completed for all of them? Do you see that?

22 **A.** Yes. The blocking of orders. The systematic blocking
23 would have taken place. The paperwork to follow appears
24 that some were missing.

25 **Q.** Do you recall being asked questions yesterday about

1 something Mr. Hartle said that if it wasn't documented, it
2 didn't happen?

3 **A.** Yes. I remember that slogan.

4 **Q.** Does this tell us that, in fact, there are things here
5 not fully documented that did happen in terms of omits and
6 diligence?

7 **A.** Yes. Yes. They would have been blocked, so they did
8 happen.

9 **Q.** Let's take a look -- let's switch gears and look at
10 Exhibit 42814, which is in evidence.

11 THE WITNESS: Thank you.

12 MR. SCHMIDT: Thank you.

13 BY MR. SCHMIDT:

14 **Q.** And just to orient ourselves, if we go to the second
15 page of this document, it says Report of Government Contact.
16 And if you scroll down, someone named Robert Corso. And
17 scroll down a little bit more. From the Columbus, Ohio DEA
18 Office. Do you see that?

19 **A.** Yes, I do.

20 **Q.** And if we go to the last page, do you remember being
21 asked questions yesterday about -- if we go up a little bit
22 -- the October 28th letter he wrote to the Washington Court
23 House office regarding two numbered items here? Do you
24 remember being asked those questions, the second one of
25 which is failure to report suspicious controlled substance

1 orders? Do you see that?

2 **A.** Yes, I do.

3 **Q.** We didn't look at the McKesson response to that letter
4 yesterday. Have you seen the McKesson response to that
5 letter?

6 **A.** No.

7 **Q.** Let me show it to you. Let me see if you received it
8 at the time.

9 THE WITNESS: Thanks.

10 MR. SCHMIDT: You're welcome.

11 BY MR. SCHMIDT:

12 **Q.** You see that this is an e-mail dated shortly after the
13 date of this letter, November 28th, 2011 from Kevin -- I'm
14 going to get the name wrong -- Meunier.

15 **A.** Meunier.

16 **Q.** Meunier?

17 **A.** Yes, sir.

18 **Q.** And it looks like he's the person that the DEA agent
19 was writing to. Do you see that?

20 **A.** Yes. He was the DC manager.

21 **Q.** And we can take this down. Is the e-mail dated
22 November 28th, 2011?

23 **A.** Yes, it is.

24 **Q.** And if you look at the cc line of this e-mail, there's
25 a -- on the second line, there is an e-mail address I think

1 you were asked about yesterday. It looks like it's a group
2 address, PGRDRC@mckesson.com. Do you see that?

3 **A.** Yes, I do.

4 **Q.** Would you have received this letter?

5 **A.** Yes. I would have been copied.

6 MR. SCHMIDT: We'd move MCWV-2158 into evidence.

7 THE COURT: Any objection?

8 MR. ACKERMAN: Hearsay, Your Honor.

9 MR. SCHMIDT: It's our letter back. It's a pretty
10 remarkable proposition if they can show a DEA letter for
11 notice and not our letter back to the DEA.

12 THE COURT: I'm going to admit it and overrule the
13 objection.

14 BY MR. SCHMIDT:

15 **Q.** So, let's look at the response back. Could we go to
16 the second page of this document, please? And if we just
17 blow up a little bit, I'm going to start at the top and work
18 down, if we could. Do you see that it's dated November
19 21st, 2011?

20 **A.** Yes.

21 **Q.** Do you see that it's written to Mr. Corso, Special
22 Agent in Charge, Detroit Field Division, Columbus District
23 Office, Columbus, Ohio?

24 **A.** Yes, I do.

25 **Q.** Do you recall him as the one who wrote the letter we

1 were looking at a moment ago?

2 **A.** Yes.

3 **Q.** And do you see this is regarding the letter of
4 October 28th, 2011?

5 **A.** Yes. That's what it's referencing.

6 **Q.** And if you need to look back at his letter, can you
7 tell me whether that's the date of his letter which you were
8 shown yesterday in Exhibit 42814, P-42814?

9 **A.** Just give me a minute. Yes, it is.

10 **Q.** And if you just keep them both beside you, what I'm
11 going to do is ask if we can just scroll down in the exhibit
12 that's on the screen, MCWV-2158, and do you see there are
13 two numbered items here in italics with entries after them?

14 **A.** Yes, I do.

15 **Q.** If you look back at the original letter from the DEA,
16 are these two numbered items what the DEA was telling you in
17 that letter?

18 **A.** Yes, they do reference and match.

19 **Q.** And what are the paragraphs below?

20 **A.** There is -- excuse me. They are McKesson's reply to
21 the issues raised in the first letter.

22 **Q.** And let's look --

23 THE COURT: Let me interject here. I think this
24 exhibit comes in. I could probably admit it under Rule 106.
25 It seems to me that fairness requires that it be considered

1 in conjunction with the audit report that it responds to.

2 MR. ACKERMAN: Well, Your Honor, the only point I
3 would make is I believe there were DEA letters, and I'll be
4 honest, I don't remember the specific one this responds to,
5 that were admitted solely for the purpose of notice to
6 McKesson. I think we would have an issue if the DEA letters
7 to McKesson were admitted only for notice, but for some
8 reason, McKesson's response was admitted for the truth.
9 That doesn't --

10 MR. SCHMIDT: We're fine with that, Your Honor, if
11 this is just notice of what we believe.

12 MR. ACKERMAN: Okay.

13 THE COURT: Are you satisfied with that?

14 MR. ACKERMAN: I think we'd maintain our
15 objection, but I understand their request.

16 THE COURT: Okay.

17 All right. Go ahead, Mr. Schmidt

18 MR. SCHMIDT: Thank you, Your Honor.

19 BY MR. SCHMIDT:

20 **Q.** So, let's look at these two items, if you can just read
21 this first point that the DEA has raised to yourself and
22 just -- if you can characterize to us what's -- what's the
23 nature of that point?

24 **A.** Do you want me to read it to myself or out loud?

25 **Q.** Just read it to yourself. No need to read it out loud.

1 **A.** Oh, okay.

2 **Q.** But I want to just ask you to summarize what you
3 understand that to mean in terms of what the DEA is raising.

4 **A.** Yes. Number -- number one references an electronic
5 vault alarm monitoring system.

6 **Q.** Is that that physical security that we were talking
7 about at the very beginning of today?

8 **A.** Yes, that is correct.

9 **Q.** And do you see -- does McKesson provide a response to
10 that that it will enact, quote, effective immediately?

11 **A.** Yes. Yes. They're making adjustments and changes to
12 their policies.

13 **Q.** Let's look at item 2. Does that say failure to report
14 suspicious controlled substance orders?

15 **A.** Yes, it does.

16 **Q.** And I want to look at the McKesson response to that.
17 It states pursuant to the memorandum of agreement signed
18 with the DEA. Do you understand that to be a reference to
19 that 2008 Settlement Agreement?

20 **A.** Yes. That's what it's referencing.

21 **Q.** McKesson electronically transmits all reports of
22 suspicious orders to DEA Headquarters in Washington; do you
23 see that?

24 **A.** Yes, I do.

25 **Q.** Was this -- DEA was raising this concern. Can you tell

1 from this letter whether he was based in Washington or in a
2 field office?

3 **A.** He was located in a field office out in Columbus.

4 **Q.** It goes on to say, to date, McKesson has submitted 22
5 reports of suspicious orders to DEA and has terminated 22
6 customers. Do you see that?

7 **A.** Yes, I do.

8 **Q.** Do you know whether you were, in fact, responsible for
9 some of those Suspicious Order Reports and some of those
10 terminations?

11 **A.** Yes, I would have been in my region.

12 **Q.** Does McKesson then talk in the next several sentences
13 about improving its processes and how its processes work?

14 **A.** Yes, it does.

15 **Q.** It then says, last sentence, in order to continue to
16 improve communications with your office, the Washington
17 Court House management will also notify the Columbus DEA
18 Office on any suspicious orders that are reported to DEA
19 Headquarters. Do you see that?

20 **A.** Yes, I do see that.

21 **Q.** Is that saying, in addition to them going to
22 headquarters, they'll now go to the office where this agent
23 works?

24 **A.** Yes, they will.

25 **Q.** All right. Just a few more documents and then I'll be

1 done.

2 MR. SCHMIDT: May I approach, Your Honor?

3 THE COURT: Yes.

4 THE WITNESS: Thank you.

5 MR. SCHMIDT: You're welcome.

6 BY MR. SCHMIDT:

7 **Q.** I've handed you a document I've marked as P-12814 that
8 you were shown yesterday. It's from Don Walker to various
9 people and it talks about a presentation to the ISMC Sales
10 Force around Know Your Customer. Do you see that?

11 **A.** Yes, I do.

12 **Q.** Do you recall being asked questions about this
13 document?

14 **A.** Yes, I do.

15 **Q.** Were these types of training sessions regularly
16 provided at McKesson?

17 **A.** Yes, they were.

18 MR. SCHMIDT: May I approach, Your Honor?

19 THE COURT: Yes.

20 THE WITNESS: Thank you.

21 MR. SCHMIDT: You're welcome.

22 BY MR. SCHMIDT:

23 **Q.** I've handed you a document you were shown yesterday,
24 P-8761. Do you see that?

25 **A.** Yes.

1 **Q.** And if we look at the bottom, I believe you were asked
2 questions about Mr. McDonald -- from Mr. McDonald where he
3 was sending a note and copying that e-mail chain that we
4 talked about just a moment ago that included you saying I've
5 noticed a trend with TCRs that needs to be addressed. Do
6 you see that?

7 **A.** Yes, I do.

8 **Q.** Do you understand this to be talking about ensuring
9 that you're addressing threshold change requests properly?

10 MR. ACKERMAN: Objection to the leading here, Your
11 Honor.

12 MR. SCHMIDT: I'm happy to take it slow, if that's
13 easier. Let's -- let's do it --

14 BY MR. SCHMIDT:

15 **Q.** Let me ask you in a different way. Do you see where he
16 says I have noticed a trend with TCRs that needs to be
17 addressed?

18 **A.** Yes, I see that.

19 **Q.** Do you see where he says the information submitted on
20 the TCR is extremely important to our documentation process?

21 **A.** Yes, I see that.

22 **Q.** When I screen the TCR, I'm assuming some steps have
23 been completed?

24 **A.** Yes, I see that.

25 **Q.** First and foremost is direct contact with the customer.

1 This contact is required.

2 **A.** Yes, I see that.

3 **Q.** Was that part of your policies?

4 **A.** Yes, it is.

5 **Q.** Was that regularly reinforced over the course of your
6 work?

7 **A.** Yes, it was.

8 **Q.** Be sure you are noting who you spoke with when
9 completing the documentation portion. Was that regularly
10 reinforced over the course of your work?

11 **A.** Yes, it was.

12 **Q.** Ask for a specific reason for the increase in usage.
13 Business growth should be accompanied by specific examples
14 of what is generating that growth. Do you see that?

15 **A.** Yes, I do see that.

16 **Q.** Is that a point that was reinforced over the course of
17 your work?

18 **A.** Yes, it was.

19 **Q.** Skip down to the second to last line. Please be as
20 specific as you can in that documentation field. Many of
21 you do this very well. I appreciate your attention to
22 detail. Do you see that?

23 **A.** Yes, I do.

24 **Q.** Is that something that was regularly reinforced in the
25 course of your work?

1 **A.** Yes, it was.

2 **Q.** Thank you.

3 **A.** You're welcome.

4 MR. SCHMIDT: May I approach, Your Honor?

5 THE COURT: Yes.

6 THE WITNESS: Thank you.

7 MR. SCHMIDT: Thank you.

8 BY MR. SCHMIDT:

9 **Q.** This is another document you were asked about
10 yesterday, P-12821, from 2011. It is an e-mail chain where
11 you've written the top e-mail. Do you see that?

12 **A.** Yes, I do.

13 **Q.** And just as one more example of this, if we go to the
14 third page, I want to cover a topic that wasn't covered
15 yesterday. If we look to that first full paragraph, do you
16 see that? To that end, we have gone to great lengths to vet
17 each of our accounts, ISMC and others, over time and put
18 photos, search engine result screen prints, dispensing data,
19 questionnaires, TCRs, Level I and interview notes on file.
20 Is that consistent with your experience that you had gone to
21 great lengths to vet each of your accounts and put those
22 documents on file?

23 **A.** Yes, it is.

24 **Q.** And just -- can you just walk us through what each of
25 those document types is?

1 **A.** Yes. So, the photographs would be photographs that we
2 would take while doing our site visits or have them taken by
3 other individuals that would have done site visits for our
4 file. We wanted to document that we were there and we
5 wanted to document what we saw while we were there.

6 The search engine results, screen prints is what I
7 mentioned going on either the OIG website or any even just
8 internet search via Google.

9 Dispensing data is we would request that as desired.
10 That would go in the file.

11 The customer questionnaire references that document we
12 looked at earlier.

13 TCRs, the Threshold Change Request Forms.

14 And then the Level Is, that if a customer had orders
15 blocked would also be there.

16 And interview notes from our visits with the
17 pharmacist.

18 **Q.** Just a few final questions. In your role at McKesson,
19 has it been important for to you try to meet the DEA's
20 expectations with respect to handling and shipping
21 prescription opioids?

22 **A.** Yes, it was.

23 **Q.** Why is that?

24 **A.** McKesson took their responsibility very seriously and
25 that was a -- a requirement of the DEA and of the Controlled

1 Substance Act.

2 **Q.** Have you tried to do that through your career at
3 McKesson?

4 **A.** Yes, I have, as well as McKesson.

5 **Q.** And from what you've seen personally and then in terms
6 of McKesson policies, have you seen changes over time,
7 efforts to improve over time, as the nature of DEA guidance
8 and the opioid crisis has changed?

9 **A.** Yes. Our program since its inception in 2008 has
10 evolved and improvements are constantly being added.

11 **Q.** Does McKesson continue to communicate with the DEA
12 about how it runs its Controlled Substance Monitoring
13 Program?

14 **A.** Yes, it does.

15 MR. SCHMIDT: Thank you very much, Mr. Oriente.

16 That's all I have for now, Your Honor.

17 THE COURT: Is there any cross by either of the
18 other defendants?

19 MS. HARDIN: No, Your Honor.

20 MR. NICHOLAS: No, Your Honor.

21 THE COURT: Mr. Rafferty, do you have any
22 redirect?

23 MR. RAFFERTY: Yes, Your Honor.

24 **REDIRECT EXAMINATION**

25 **BY MR. RAFFERTY:**

1 Q. Good afternoon, Mr. Oriente.

2 A. Good afternoon.

3 Q. Mr. Oriente, I'm going to try and be as quick and brief
4 as I can. I just want to follow up on some of the questions
5 that Mr. Schmidt asked you today, okay?

6 A. Certainly.

7 Q. All right. First, if we could pull up the document
8 that was just shown to you by Mr. Schmidt, it's MCWV-02158,
9 and this is the McKesson response to the DEA's audit of the
10 Washington Court House. Do you recall being asked questions
11 just a few minutes ago about this?

12 A. Yes, sir.

13 Q. Now, I look at the time frame and it says -- or I'm
14 sorry. Back up. When you were asked questions about the
15 response, the response primarily in number 2 dealt with --
16 or the allegation in 2 was that Washington Court House had
17 failed to report suspicious controlled substance orders. Do
18 you see that?

19 A. Yes.

20 Q. Okay. And this time frame that was submitted was -- or
21 this e-mail was dated November 28th, 2011, correct?

22 A. Yes.

23 Q. And, in fact, if we go now to P-42554, which is
24 admitted into evidence, which is the 2017 settlement, do you
25 see that on the screen, sir?

1 **A.** Yes, I do.

2 **Q.** Okay. And, in fact, if you look on Page 3, on (3), it
3 says covered conduct. For purposes of this agreement,
4 covered conduct shall mean the following conduct alleged by
5 the government for the covered time period. And then it
6 goes -- and we talked about this. McKesson failed to
7 maintain effective controls against diversion. Do you see
8 that under A?

9 **A.** Yes, I do.

10 **Q.** Okay. And, in fact, if we go to Page 4, Washington
11 Court House, Ohio was actually one of those distribution
12 centers that is the subject of this particular agreement,
13 correct?

14 **A.** Yes. It's included in the allegations.

15 **Q.** And if you go up to the -- for the -- to establish what
16 the time period of the covered conduct is, so the covered
17 time period, if you go up to Paragraph 2, midway through the
18 paragraph on that same page under acceptance of
19 responsibility, it says McKesson acknowledges that at
20 various times during the period from January 1, 2009 up
21 through and including the effective date of this agreement
22 it did not identify or report to DEA certain orders placed
23 by certain pharmacies which should have been detected as
24 suspicious. Do you see that?

25 **A.** Yes, I do.

1 **Q.** So, January 1, 2009. And then, if we look at the
2 effective -- it says the effective date of this agreement.
3 So, if we then turn to Page 12, the effective date -- or,
4 I'm sorry, the date of the -- the execution of the
5 agreement, the agreement shall become effective on the date
6 of signing by the last signatory. Do you see that?

7 **A.** Yes, sir.

8 **Q.** So, if we turn now two pages further to Page, I
9 believe, 15, we are now looking at the last date of the
10 signature -- or last date of the signatory -- is
11 January 17th, 2017. Do you see that?

12 **A.** Yes, I do.

13 **Q.** Okay. So, the covered conduct for the conduct
14 contained inside the 2017 agreement was January 1, 2009 to
15 January 17th, 2017, correct?

16 **A.** For this agreement, yes.

17 **Q.** Okay. And the covered conduct included the failure to
18 report suspicious orders by Washington Court House; true?

19 MR. SCHMIDT: Objection. Mischaracterizes the
20 document.

21 MR. RAFFERTY: You can go back to read it. Page
22 3.

23 THE COURT: I'll overrule the objection. Go
24 ahead.

25 MR. RAFFERTY: Okay. Thank you, Your Honor.

1 BY MR. RAFFERTY:

2 **Q.** The exact conduct that was being discussed in W -- in
3 MCWV-02158. And if we could, go to Page 1, the e-mail, and
4 that's November 28th, 2011. So, this conduct, as a result
5 of failed audit, was during the same time period as the
6 allegations and the ultimate acceptance of responsibility by
7 McKesson in the 2017 Settlement Agreement; true?

8 MR. SCHMIDT: Object to characterization. That's
9 not an accurate characterization.

10 MR. RAFFERTY: That is a -- that's --

11 THE COURT: Well, I will sustain the objection.

12 I've got the point, Mr. Rafferty.

13 MR. RAFFERTY: That's all that matters. Okay,
14 thank you.

15 BY MR. RAFFERTY:

16 **Q.** If we could, also, you were asked some questions this
17 afternoon about P-00115. This is the audit, the internal
18 audit that was done by McKesson, and if you go -- you were
19 asked questions about Pages 13 and 14. And if we look, Page
20 13 dealt with the Level I forms and Page 14, the threshold
21 change requests. Do you see that, sir?

22 **A.** Yes.

23 **Q.** Okay. And you were asked by Mr. Schmidt about the
24 failure to have documentation for those, including at
25 Washington Court House Distribution Center, and you were

1 asked because there's no documentation that you can't say
2 that the due diligence or the forms weren't done, correct?

3 **A.** That is correct.

4 **Q.** Okay. But because there's no documentation, you can't
5 say that the due diligence or the forms were ever filled
6 out, can you?

7 **A.** The forms, no, but the -- the review, as far as the
8 threshold change, would had to have been done in order to
9 make that change.

10 **Q.** But if the threshold -- you can't say that. Does it
11 say anywhere in here that the threshold change request was
12 done, but without process, or without documentation?

13 **A.** It doesn't say it in this report, no.

14 **Q.** Okay. And we do know -- and you were asked about
15 document retention policies with McKesson and do you hold
16 onto these forms forever, correct?

17 **A.** Yes, that's correct.

18 **Q.** Okay. Now, nowhere in here does the audit say that
19 that those forms don't exist, but that's okay, because the
20 document retention policy probably destroyed them. Does it
21 say that anywhere in there?

22 **A.** It does not reference it in this, no.

23 **Q.** Okay. And if it was past the document retention period
24 for these audit forms or, I'm sorry, for these TCRs or Level
25 Is, then there wouldn't be any reason to note it, correct,

1 by the auditor.

2 MR. SCHMIDT: Objection -- I apologize.

3 Objection. Speculation. Vague.

4 THE COURT: Sustained.

5 BY MR. RAFFERTY:

6 **Q.** Well, we do know one thing, that the findings on the
7 audit by Mr. Walker, if we go back to the front page, were
8 documented as three major areas and it says -- he says we
9 have work to do, correct?

10 MR. SCHMIDT: And, Your Honor, they weren't --
11 just for the record, they weren't findings by Mr. Walker, so
12 I'll object to the foundation.

13 MR. RAFFERTY: This was the way Mr. Walker
14 described them in his e-mail.

15 THE COURT: He can clear it up and I think he just
16 did.

17 MR. SCHMIDT: Okay.

18 BY MR. RAFFERTY:

19 **Q.** Mr. Walker characterized the findings in the audit as
20 being three major areas and he said we have work to do,
21 correct?

22 **A.** Yes. The audit was completed by our Internal Audit
23 Team.

24 **Q.** Okay. Now, you were also asked some questions -- going
25 back to the 2017 Settlement Agreement, you were asked some

1 questions about the first page by Mr. Schmidt. It's
2 P-42554. And you were asked questions specifically by Mr.
3 Schmidt about Paragraph 4.

4 MR. RAFFERTY: May I approach the screen?

5 THE COURT: Yes.

6 BY MR. RAFFERTY:

7 Q. About Paragraph 4, about this particular McKesson Arora
8 administrative inspection warrant, correct?

9 A. Yes, I was.

10 Q. And you were asked about whether or not this involved
11 West Virginia; do you recall that?

12 A. Yes, I recall that.

13 Q. In fact, it did involve West Virginia, didn't it, sir?

14 A. I'm not aware that it did, sir.

15 Q. Okay. Let's go down to Paragraph 5 because that wasn't
16 the only administrative inspection warrant issued by the DEA
17 that was the basis for the 2017 Settlement Agreement,
18 correct?

19 A. Yes. It says there were others here.

20 Q. Yes. And it says between March, 2013 and present, DEA
21 executed one additional AIW and served numerous
22 administrative subpoenas and conducted a number of cyclic
23 inspections at various McKesson U. S. Pharmaceutical
24 Distribution Centers nationwide, including McKesson's
25 Washington Court House, Ohio Distribution Center. And then

1 it goes on and lists several other distribution centers. Do
2 you see that?

3 **A.** I do, but it doesn't say that the inspection warrant
4 was relative to Washington Court House. It just includes
5 that saying that numerous subpoenas and cyclical
6 inspections. It doesn't break it out which DCs had the
7 cyclical inspections versus NAIW.

8 **Q.** Okay. But we just did read the fact that Washington
9 Court House was one of the distribution centers under the
10 covered conduct section discussing the failure to report
11 suspicious orders, correct?

12 MR. SCHMIDT: I've objected to going well beyond
13 the scope and repetitive, but I will object to that as asked
14 and answered.

15 THE COURT: I'll sustain the objection.

16 MR. RAFFERTY: Your Honor, if I could, just for
17 the record, he was asked whether or not this -- he was asked
18 specifically only about Arora, Colorado. There's numerous
19 other ones that show that this is nationwide and, therefore
20 -- and Washington Court House feeds opioid pills into West
21 Virginia.

22 THE COURT: Well, you brought that out, that
23 Washington Court House is mentioned here.

24 MR. SCHMIDT: And, Your Honor, for the record, I
25 asked about Arora because the question asked about it was,

1 was that what started this process.

2 MR. RAFFERTY: And, Your Honor, I think based upon
3 the questioning and the answers, I would also renew our --
4 our -- renew our offer of the DEA letters and DOJ letters
5 that were excluded yesterday that detail into specifically
6 the pharmacies and the distribution centers and the conduct
7 that was involved and ultimately led specifically to this
8 agreement because I believe they have opened the door to
9 that.

10 MR. SCHMIDT: This is nothing more than an
11 argument that because they asked questions and I've followed
12 up, somehow I've opened a door to something that was
13 inadmissible. That's not correct, Your Honor.

14 MR. RAFFERTY: He specifically asked whether it
15 involved West Virginia. It does. We know it does. And he
16 -- and now --

17 THE COURT: Well, your -- I'm going to sustain the
18 objection and cut this off. You're just -- I think you've
19 come far beyond what the exhibit here shows and --

20 BY MR. RAFFERTY:

21 **Q.** Do you recall being shown a stack of DEA certificates
22 for the renewal of the licenses of the different
23 distribution centers?

24 **A.** Yes, sir.

25 **Q.** Okay. In fact, in terms of Washington Court House,

1 part of the agreement for the 2017 settlement was for
2 Washington Court House to lose its DEA license for two
3 years, correct?

4 **A.** Yes. I believe that was so.

5 **Q.** So, we would not find a DEA license for those two years
6 of Washington Court House, the distribution center that
7 feeds Cabell County, correct?

8 **A.** Yes. During that time, they would not have had a
9 license.

10 **Q.** You were also asked questions by Mr. Schmidt about the
11 2008 settlement?

12 **A.** Yes.

13 MR. RAFFERTY: It is P-23733, Corey.

14 BY MR. RAFFERTY:

15 **Q.** And if you would, the date of this is May 2nd, 2008,
16 correct?

17 **A.** Yes.

18 **Q.** And you were specifically asked questions by Mr.
19 Schmidt about Page 6 under the DEA obligations and the DEA
20 obligations about -- on Paragraph E. Within 150 days of the
21 effective date of this agreement, but not earlier than
22 90 days after the effective date of this agreement, DEA
23 shall conduct reviews of the functionality of McKesson's
24 Diversion Compliance Program. Do you see that?

25 **A.** Yes, I do.

1 Q. Okay. And then, it went down -- Mr. Schmidt went down
2 to Paragraph F and talked about the three issues, failing to
3 maintain effective controls, et cetera. Do you see that?

4 A. Yes.

5 Q. Okay. And you said that your understanding was that
6 you all passed those inspections, correct?

7 A. That was my understanding, yes.

8 Q. Okay. And you know, though, that the cover date, as we
9 went through in the 2017 date, starts for the conduct
10 involved in the 2017 starts in January of 2009? We went
11 through that, correct?

12 A. Yes. I believe we did.

13 Q. Okay. So, almost immediately after the 150 days passed
14 and you all passed your inspections from the DEA, the
15 conduct that resulted in the 2017 settlement started,
16 correct?

17 MR. SCHMIDT: Objection, foundation.

18 THE COURT: Well, overruled.

19 THE WITNESS: I haven't looked at the exact dates
20 when one started and when one ended.

21 BY MR. RAFFERTY:

22 Q. Okay. Well, if we just take the date, that's all I'm
23 looking at, May -- May 2nd, 2008, and then the covered
24 conduct for the 2017 starts January, '09. So, that's right
25 after 150 days approximately, correct?

1 THE COURT: There has been testimony to the dates
2 the audit covered, it seems to me. I don't think I've heard
3 any evidence about -- relating to when the conduct started.

4 MR. RAFFERTY: That's the -- that's the covered
5 conduct, Your Honor. In the 2017, it says the covered
6 conduct and the effect -- and the covered conduct dates are
7 January, '09 through the effective date of the agreement,
8 which is January 17th.

9 MR. SCHMIDT: But I think Your Honor's question is
10 well taken. That's the allegations in the settlement.
11 That's not in the acceptance of conduct, acceptance of
12 responsibility.

13 MR. RAFFERTY: That is in the -- the effective
14 date is in the effective -- is in the accepted --

15 THE COURT: Well, I understand what the effective
16 date is, but I think Mr. Schmidt is correct. I think there
17 is a difference between the effective date, the beginning of
18 the time period and when the conduct actually started, and I
19 don't think there's any evidence as to when it actually
20 started.

21 MR. RAFFERTY: Well, and in those DEA and DOJ
22 letters, for the record, we can start spelling out when the
23 conduct was.

24 THE COURT: Barring if I would let them in, right?

25 MR. RAFFERTY: Right.

1 MR. SCHMIDT: And, Your Honor, those just contain
2 more allegations, which I think is why Your Honor correctly
3 kept them out.

4 MR. RAFFERTY: May I continue, Your Honor?

5 THE COURT: Yes, please.

6 BY MR. RAFFERTY:

7 Q. The next document I want to talk about, you were asked
8 about P-42657. Do you see the -- do you recall answering
9 some questions from Mr. Schmidt about that document?

10 A. Yes, I do.

11 Q. And, in fact, I think what it was -- one of the
12 particular pages you were asked about is Page 8. This is
13 the Know Your Customer thresholds. Do you see that?

14 A. Yes, I do.

15 Q. And I believe this is one of the presentations you said
16 that you prepared, correct?

17 A. Yes. I would have prepared this off of the one that
18 Don Walker gave to the DEA Headquarters.

19 Q. Okay. And you were giving this to the DEA, correct?

20 A. Yes.

21 Q. Okay. And it's important to be honest and forthright
22 with the DEA when you're communicating with them?

23 A. Yes, it would be.

24 Q. Okay. If we look down at what you -- your notes, it
25 says Michael Slide. And then, if you go down to the large

1 drug chain, Rite Aid; do you see that?

2 **A.** Yes, I see that.

3 **Q.** And then you've got average -- you've got average
4 oxycodone 27, Alprazolam, 0 and hydrocodone, 0. Do you see
5 that?

6 **A.** Yes, I do.

7 **Q.** But, in fact, during that exact time period of this
8 presentation, you were, in fact, providing and distributing
9 hydrocodone to Rite Aids, were you not?

10 **A.** The average would have been -- worked out to 0.

11 **Q.** The average -- well, if the average -- if there's any
12 numbers being sold, the average won't work out to 0,
13 correct?

14 **A.** It may have been so small that it wasn't, you know,
15 calculated. That's why the average over 5,000 stores worked
16 out to be less than 1.

17 MR. RAFFERTY: If we could pull up what's already
18 in evidence, P-43225, and if we turn to Page 16 of that.

19 MR. SCHMIDT: Your Honor, this is a document Dr.
20 McCann prepared that we'll preserve our objection to.

21 THE COURT: All right. You objected and I let it
22 in, correct?

23 MR. RAFFERTY: I'm sorry. Say that again.

24 THE COURT: I overruled the objection and let this
25 document in.

1 MR. RAFFERTY: Yes. It's been admitted, Your
2 Honor.

3 THE COURT: Go ahead.

4 MR. RAFFERTY: It's already in evidence. Do you
5 need another copy?

6 THE COURT: No. I don't need another copy. I'm
7 drowning in paper.

8 MR. RAFFERTY: Trust me, I understand.

9 BY MR. RAFFERTY:

10 Q. If you look at the time period -- and this is -- I want
11 to look at just the Rite Aids in Cabell County. You were --
12 you were referencing the average for Rite Aids throughout
13 the country, correct, in your presentation?

14 A. Yes, as they're -- as they're chained, yes.

15 Q. Okay. And if we look --

16 MR. RAFFERTY: If you can take that down, Corey,
17 just because -- there we go.

18 BY MR. RAFFERTY:

19 Q. If you start looking at the 2008 time period you, in
20 fact, are distributing hydrocodone to the Rite Aids in
21 varying amounts dating back to January, '06, correct?

22 A. Where does it say that this is hydrocodone?

23 Q. Right up here in the top left corner.

24 A. Oh, okay. Thank you.

25 Q. Yeah. And I forget sometimes that not everybody is in

1 the courtroom every day. And that's based on the ARCOS data
2 from 2006 to 2014. Do you see that in the left corner?

3 **A.** Yes, I do.

4 **Q.** Okay.

5 **A.** Are these shipment made by McKesson or by Rite Aid?

6 **Q.** By McKesson.

7 **A.** Okay.

8 **Q.** By McKesson. You see throughout this time period --

9 MR. SCHMIDT: I'm going to object. We now have a
10 lawyer testifying about a document the witness says he
11 doesn't understand.

12 THE COURT: Sustained.

13 Ask him a question, Mr. Rafferty.

14 MR. RAFFERTY: Okay.

15 BY MR. RAFFERTY:

16 **Q.** In fact, based upon this chart and the ARCOS data you
17 were, in fact, distributing hydrocodone to the Rite Aids in
18 Cabell County, correct?

19 **A.** If these are McKesson ARCOS records, yes. Can I ask a
20 question?

21 THE COURT: You can explain your answer.

22 THE WITNESS: Yeah. What date was my presentation
23 to the DEA?

24 MR. RAFFERTY: It was in 2008 and I believe it was
25 November, but let me pull it up. November 6, 2008.

1 THE WITNESS: Okay, thank you.

2 BY MR. RAFFERTY:

3 Q. The next document --

4 A. Can we go back to the previous document? Yeah. So,
5 when you look at November, 2008, when I gave that
6 presentation and previous, the quantities averaging are --
7 are a couple hundred pills a months. And so, therefore, my
8 presentation saying the average was 0 is accurate.

9 Q. Okay. This particular month, just in November, you
10 distributed 2,200 dosage units to the Rite Aids just in
11 Cabell County. That doesn't take into account nationwide,
12 correct?

13 A. These 2,200 that you referenced would have been
14 included in their national number that calculated out to 0.

15 Q. Right. So, it's your testimony that you were actually
16 selling hydrocodone to Rite Aids during the time period that
17 you said -- told the DEA your average was 0?

18 A. On an average national basis.

19 Q. Okay.

20 A. Okay?

21 Q. So, if you tally up any numbers above 0, the average
22 would be --

23 THE COURT: You're arguing with him now, Mr.
24 Rafferty. We've been through this over and over again and
25 you need to move on.

1 BY MR. RAFFERTY:

2 Q. You were asked questions about MCWV-00185, the
3 questionnaires, the onboarding questionnaires. Do you
4 recall that, Mr. Oriente?

5 A. May I see what you're referencing? Yes.

6 Q. And, in fact, you would not have filled out these
7 questionnaires for any of the ISMCs in Cabell County,
8 correct?

9 A. That is correct.

10 Q. That would have been Dave Gustin, correct?

11 A. Yes. Well, Dave Gustin and the distribution support
12 staff.

13 Q. Okay. And these should be, I think you testified,
14 filled out completely and accurately, correct?

15 A. I don't recall saying that exactly, but they should be
16 filled out, yes.

17 Q. Okay. Now, you didn't do these customer questionnaires
18 for Rite Aids, correct?

19 A. Not one for every Rite Aid store, no. There would have
20 been more of a corporate questionnaire involving the chain.

21 Q. You were asked a lot of questions about orders being
22 blocked and reported and when they were blocked and when
23 they were reported throughout the examination by Mr.
24 Schmidt, correct?

25 A. Yes, that is correct.

1 Q. Okay. And, in fact, there was a time period from
2 May 23rd, 2008 to July 31st, 2013 where there were, in fact,
3 zero orders reported to the DEA for Cabell County, correct?

4 A. I wouldn't know specifically to Cabell County. It
5 wasn't my area.

6 Q. Do you know if there were any blocked orders reported
7 for the State of West Virginia during that time period?

8 A. I do not know.

9 MR. RAFFERTY: Your Honor, at this time,
10 plaintiffs would move in P-42089.

11 THE WITNESS: Thank you.

12 MR. RAFFERTY: Your Honor, this is the discovery
13 response to Defendant McKesson -- I'm sorry, to Plaintiffs'
14 first combined discovery request to distributors number 3
15 and it is -- was given to us in response to that
16 interrogatory as the block and reported -- order report for
17 Cabell County.

18 MR. SCHMIDT: Your Honor, we will object. It's
19 well outside the scope. This is something they tried to
20 cover yesterday. They didn't get it in yesterday. They
21 didn't use it with him yesterday. I don't think they're
22 going to have any foundation for using it with him and so,
23 we will object to it object those terms.

24 THE COURT: The objection is sustained.

25 MR. RAFFERTY: I believe it's independently

1 admissible as a discovery response of McKesson Corp. I
2 would ask the Court --

3 THE COURT: What's the relevance though?

4 MR. RAFFERTY: Because if you go through it
5 starting all the way back from 2013, if you look at starting
6 -- the entire almost last half of the section shows no DEA
7 reported suspicious orders for any of these orders
8 throughout that time period.

9 And, as I said, we requested this information in an
10 interrogatory and this was what was given to us. And the
11 interrogatory specifically requested --

12 MR. SCHMIDT: I think it's --

13 MR. RAFFERTY: Please --

14 MR. SCHMIDT: Sorry. Go ahead.

15 MR. RAFFERTY: Please identify each suspicious
16 order you reported to any regulatory body, including DEA
17 and/or the West Virginia Board of Pharmacy arising out of
18 CT2 and produce all documents related thereto. And this is
19 what we got from the company. It's authentic. They've
20 stipulated to the authenticity of it. And I believe as a
21 discovery response it would be admissible independently of
22 the witness, but this goes directly to his testimony as to
23 the reporting of suspicious orders.

24 MR. SCHMIDT: Your Honor, it's outside the scope
25 and if it were admissible independently, that would be the

1 correct route for admitting it, to admit it independently,
2 as opposed to going outside the scope with a witness who is
3 not going to have a foundation to testify about this.

4 MR. RAFFERTY: Well, then I move it -- I move it
5 in independently. I won't any questions --

6 THE COURT: It is -- it is within the scope based
7 on his testimony about reporting suspicious orders, isn't
8 it?

9 MR. RAFFERTY: Yes, sir, Your Honor.

10 THE COURT: I'm going to admit it for what it's
11 worth. It's -- it's admitted.

12 MR. RAFFERTY: Thank you, Your Honor.

13 THE WITNESS: This document, if I could comment on
14 it?

15 MR. RAFFERTY: Well, because you had said you
16 weren't aware of what the reports were, I wasn't going to
17 ask any questions about it.

18 THE WITNESS: Am I --

19 THE COURT: Well, you have to answer his
20 questions, Mr. -- Mr. Oriente.

21 THE WITNESS: So, I can't --

22 THE COURT: If this is an explanation of one of
23 your prior answers, I will let you. Go ahead.

24 THE WITNESS: Okay. Well, in being handed this
25 report, these are blocked orders and reported orders, as

1 should be. I just wasn't aware of them.

2 BY MR. RAFFERTY:

3 **Q.** Okay. And if you look at the fourth column over, sir,
4 at the top, what does that say, DEA reported date. Do you
5 see that?

6 **A.** Yes.

7 **Q.** Okay.

8 THE COURT: How much more do you have, Mr.
9 Rafferty?

10 MR. RAFFERTY: Maybe 10-15 minutes.

11 THE COURT: Okay. We'll take a 15-minute break.

12 (Recess taken)

13 (Proceedings resumed at 3:44 p.m.)

14 THE COURT: Is the witness in the courtroom?

15 MR. SCHMIDT: Sorry, Your Honor.

16 MR. RAFFERTY: I have good news, though, Your
17 Honor. It will be pretty much done. I was able to reach
18 some agreements with Mr. Schmidt.

19 THE COURT: That's good news, Mr. Rafferty.

20 MR. RAFFERTY: I sensed it would be.

21 THE COURT: Okay, Mr. Rafferty.

22 MR. RAFFERTY: Thank you.

23 BY MR. RAFFERTY:

24 **Q.** I'd like to hand you, sir, what's been marked for
25 purposes of identification as P-13296.

1 MR. SCHMIDT: I thought the agreement was just to
2 mark it in with no questions.

3 MR. RAFFERTY: Oh, okay. I thought you wanted me
4 to at least identify it. Okay. We move in P-13296.

5 THE COURT: Any objection?

6 MR. SCHMIDT: No objections pursuant to our
7 stipulation, Your Honor.

8 THE COURT: Okay. It's admitted.

9 MR. RAFFERTY: We also -- I think I need one extra
10 copy.

11 We also move in at this time P-13710, Your Honor.

12 MR. SCHMIDT: Your Honor, I believe this is one of
13 the documents we said yesterday we would confer on and
14 check.

15 THE COURT: I have to refresh myself on what it
16 is.

17 MR. SCHMIDT: Having had the chance to do that, no
18 objection.

19 THE COURT: So you're not objecting to it?

20 MR. SCHMIDT: Correct.

21 THE COURT: All right. It's admitted.

22 MR. RAFFERTY: Finally, Your Honor, we move into
23 evidence P-4247 -- I'm sorry -- P-42728A.

24 MR. SCHMIDT: Your Honor, this is another one we
25 talked about yesterday. We've been able to confer. It's

1 been adjusted. So we have no objection.

2 THE COURT: All right. It's admitted.

3 MR. RAFFERTY: And with that, Your Honor, I have
4 no further questions.

5 THE COURT: Thank you, Mr. Rafferty.

6 Ms. Mainigi, you wanted to -- I'm sorry. Do you have
7 more questions?

8 MR. SCHMIDT: I had about five or ten minutes.
9 Following Mr. Rafferty's lead, I'll drop them. We're
10 concluded.

11 THE COURT: Okay. You may proceed.

12 MR. SCHMIDT: May we excuse the witness, Your
13 Honor?

14 THE COURT: Yes. You say you want to recall --

15 MR. SCHMIDT: Oh, no. I'm dropping the questions.

16 THE COURT: Oh, okay. So we're done with Mr.
17 Oriente?

18 MR. SCHMIDT: We're done, yes. I'm sorry for the
19 confusion.

20 THE COURT: Mr. Oriente, I'm going to give you
21 some good news, sir. You're free to go. You're excused.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Thank you, sir, very much.

24 THE WITNESS: Thank you.

25 THE COURT: You've been very helpful and we

1 appreciate you being here.

2 THE WITNESS: Thank you very much.

3 MR. SCHMIDT: If Your Honor doesn't mind, we'll
4 bring in our next witness and I'll walk Mr. Oriente out if
5 that's okay.

6 THE COURT: That will be fine.

7 THE WITNESS: Thank you, sir. Have a good day.

8 MS. MAINIGI: Your Honor, would you like me to
9 proceed right now?

10 THE COURT: Yes.

11 MS. MAINIGI: Your Honor, this will be very quick.
12 I just wanted to put something on the record.

13 Cardinal's third and final witness that plaintiffs had
14 planned to call in their case basically right now in terms
15 of the timing of their case, that witness, Todd Cameron, is
16 no longer going to be called and I just wanted the record to
17 so reflect.

18 Mr. Cameron is the SVP of Supply Chain Integrity. He
19 runs Cardinal's Anti-Diversion program and has run it since
20 2012. He was expected to talk about that system on both
21 cross and direct.

22 He's been here preparing for a few days, but late last
23 night the plaintiffs let us know that they no longer intend
24 to call him and that they are foregoing his appearance in
25 their case all together.

1 Now, obviously, the plaintiffs are the master of their
2 case. But because there was an expectation that Mr. Cameron
3 would be testifying, I wanted to put something on the record
4 to just reflect the change status.

5 Thank you, Your Honor.

6 THE COURT: So he won't be called at all? Is that
7 right?

8 MS. MAINIGI: Well, Your Honor, we certainly have
9 the ability to call him in our case, but I'm told by the
10 plaintiffs that they do not intend to call him in their
11 case.

12 MS. KEARSE: Yes, Your Honor, this is Ann Kearse.
13 That's my understanding that there was an agreement with Mr.
14 Farrell. Mr. Farrell is not here right now, but we will not
15 be calling him in our case in chief.

16 THE COURT: All right. Thank you, Ms. Kearse.

17 MS. MAINIGI: Thank you, Your Honor.

18 THE COURT: You can call your next witness.

19 MR. KENNEDY: Yes, Your Honor. We would call
20 Mr. Tim Ashworth.

21 THE COURT: Okay, Mr. Kennedy.

22 MR. STANNER: For the court reporter, Your Honor,
23 it's been a while since I've had a chance to talk, so just
24 for the record, Andrew Stanner on behalf of McKesson.

25 THE COURT: All right, Mr. Stanner.

1 THE CLERK: Mr. Ashworth, could you state your
2 name for the record?

3 THE WITNESS: Timothy Scott Ashworth.

4 THE CLERK: Would you raise your right hand.

5 **TIMOTHY SCOTT ASHWORTH, PLAINTIFFS' WITNESS, SWORN**

6 THE CLERK: Have a seat right there. Thank you.

7 MR. KENNEDY: Your Honor, Eric Kennedy. I was
8 here last week.

9 THE COURT: Yes. I remember you, Mr. Kennedy.

10 MR. KENNEDY: Thank you, Your Honor.

11 THE COURT: You may proceed.

12 MR. KENNEDY: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. KENNEDY:

15 Q. Mr. Ashworth, my name is Eric Kennedy. We have not
16 met before. It's good to see you today. If you could
17 please state your name for the record, sir.

18 A. Timothy Scott Ashworth.

19 Q. And are you currently employed?

20 A. Yes.

21 Q. And where are you employed, sir?

22 A. McKesson.

23 Q. You are a Regional Sales Manager. Would that be
24 correct?

25 A. Yes.

1 Q. And can you tell us how long it is that you've been
2 employed by McKesson?

3 A. Since 2005.

4 Q. And you sell to the independent retail pharmacies?
5 Would that be correct?

6 A. Yes.

7 Q. So you don't call on the large regional chains like CVS
8 and Rite-Aid, et cetera; correct?

9 A. No.

10 Q. You started as a sales manager?

11 A. Actually, I'm a sales rep, not really a sales manager.

12 Q. Okay. If I use the term sales executive, sales
13 manager, sales rep, I'm trying to just communicate what your
14 job is. All right? I might mix those terms up. So you
15 understand what I'm saying if I go sales rep, sales manager,
16 sales executive. All right?

17 A. Yes.

18 Q. Prior to McKesson -- McKesson in '05. Prior to that,
19 you were at D&K Healthcare Resources? True?

20 A. Yes.

21 Q. And what was your job there, sir?

22 A. Sales rep.

23 Q. And prior to that, could you tell us what you did?

24 A. I got the job out of college, so it's really the only
25 job I've had.

1 Q. So you went to Marshall? Is that true?

2 A. Yes.

3 Q. All right. So what year did you graduate then and
4 start as a sales rep?

5 A. It was 1988.

6 Q. So you have at this point over 30 years experience
7 selling to pharmacies; correct?

8 A. Yes.

9 Q. And you would have over 30 years experience selling
10 controlled substances to pharmacies?

11 A. Yes.

12 Q. I know you sell a lot of different products, a lot of
13 different services, but what we're going to focus on today
14 is controlled substances. All right?

15 A. Okay.

16 Q. Can you tell us, focusing on McKesson, do you have a
17 sales territory?

18 A. Yes.

19 Q. And can you describe that for us, please?

20 A. It goes, it goes -- it's the State of West Virginia.
21 It goes as far north as Clarksburg to Parkersburg. I go
22 about an hour north of Parkersburg to Sistersville, or
23 Sistersville. And as far as I go above Clarksburg is
24 Shinnston.

25 And then I come all the way down to the state line and

1 have all the way to the state line of Virginia with the
2 exception of a few counties on the Virginia/West Virginia
3 border.

4 **Q.** I know you just described a geographic area that must
5 include Cabell County, but I'm not as good at geography, but
6 that includes Cabell County; true?

7 **A.** Yes.

8 **Q.** And how long has Cabell County been in your sales rep
9 again since 2005 on?

10 **A.** It's always been in my territory.

11 **Q.** And you sell controlled substances then in Cabell
12 County; correct?

13 **A.** I sell the service -- our distribution services in
14 Cabell County, yes.

15 **Q.** Now, my specific question, you sell controlled
16 substances to pharmacies within Cabell County. Would that
17 be true?

18 **A.** That's part of what they purchase, yes.

19 **Q.** And that would include opioids?

20 **A.** Yes.

21 **Q.** Oxycodone?

22 **A.** Yes.

23 **Q.** Hydrocodone?

24 **A.** Yes.

25 **Q.** How many customers -- I know it's changed over the

1 years, but approximately how many customers do you have in
2 Cabell County?

3 **A.** Currently I have three customers.

4 **Q.** And if I go back to the 2010 period, how many customers
5 in Cabell County?

6 **A.** Probably a couple, two or three.

7 **Q.** Custom Script? Would that have been one?

8 **A.** Yes.

9 **Q.** Part of your responsibilities would include getting new
10 customers?

11 **A.** Yes.

12 **Q.** Once a pharmacy, then, becomes a new customer, part of
13 your responsibilities would be not just selling the goods
14 and the services, but in keeping them satisfied and a happy
15 customer. True?

16 **A.** Yes. I would go further to say to make sure that we
17 deliver our product expectations of what they are looking
18 for in a distributor.

19 **Q.** Keeping current customers is an important part of your
20 responsibilities. True?

21 **A.** Yes.

22 **Q.** How much are you on the road over the last 30 years?
23 How much are you on the road?

24 **A.** At least four days a week.

25 **Q.** And that involves visiting customers -- basically, when

1 we say on the road, you're actually going to the pharmacies?

2 **A.** Yes.

3 **Q.** I think you said in one of your depositions it's a
4 people business. What did you mean by that?

5 **A.** It's, it's a relationship business. The small
6 independent pharmacies that we deal with -- that I deal
7 with, they like relationships -- it's a relationship
8 business. And that is what I meant by, by that statement.

9 **Q.** Maintaining good relationships with the pharmacist
10 then? That's important?

11 **A.** With, with everyone in the pharmacy.

12 **Q.** Everybody in -- the pharmacist, the owner, and
13 everybody else?

14 **A.** Yes.

15 **Q.** Did you know and understand that McKesson over the last
16 decade has sold more opioids than any other distributor in
17 the country? Are you aware of that?

18 **A.** No, I'm not.

19 **Q.** Does McKesson market the sale of opioids?

20 **A.** No.

21 **Q.** Does McKesson have rebate programs?

22 **A.** Yes.

23 **Q.** And can you tell the Court what a rebate program is?

24 **A.** A rebate can be on anything, brand or generic products.
25 I mean, we have a tech credit rebate on technology.

1 Q. Rebate programs and generic drugs?

2 A. Yes.

3 Q. Is there a focus on the generic drugs because that's a
4 bigger profit margin?

5 A. Yes.

6 Q. And would hydrocodone be a part of the rebate program
7 as it relates to generics?

8 A. Yes.

9 Q. And that's been true since 2005. True?

10 A. Yes.

11 Q. And, sir, you also have had rebate programs over the
12 years with respect to fentanyl, have you not?

13 A. Yes.

14 Q. And, sir, you also have something known as -- you have
15 price reduction programs, do you not?

16 A. Yes.

17 Q. And oxycodones have been a part as late as 2018 with
18 respect to price reduction programs. True?

19 A. I think all of the generic items we have is part of our
20 competitive price mix.

21 Q. The answer would be "yes"?

22 A. Yes. Generic prices are always dropping, so there's
23 always adjustments to generic pricing.

24 Q. Including hydrocodones and oxycodones?

25 A. Yes.

1 Q. And, sir, the purpose of the rebate programs is to
2 induce the customer to purchase more. Would that be right?

3 A. Yes.

4 Q. And McKesson has those programs because they work.
5 True?

6 A. In some cases, they work.

7 Q. And the purpose of price reduction programs is to
8 induce customers to purchase more. True? That's why you
9 lower the prices?

10 A. Yes.

11 Q. And McKesson has those programs, again, because they
12 work. True?

13 MR. STANNER: Objection, Judge, speculation as to
14 McKesson.

15 THE COURT: Well, if he knows.

16 BY MR. KENNEDY:

17 Q. Sir, let's look at how you get paid. You have a
18 base salary. True?

19 A. Yes.

20 Q. That's been true since 2005 when you started at
21 McKesson?

22 A. Yes.

23 Q. You were provided a car?

24 A. Yes, correct.

25 Q. In addition to your base salary, you have a bonus

1 structure at McKesson, do you not?

2 **A.** Yes.

3 **Q.** And somewhat of a complicated system, you receive a
4 package in the beginning of each year and it outlines
5 different targets, incentives, and how you can get bonuses.
6 True?

7 **A.** Yes, correct.

8 **Q.** But, but, basically, sir, the basic premise is the more
9 you sell, the more money you can make. True?

10 **A.** Up to a limit. There's --

11 **Q.** There's limits, absolutely.

12 MR. STANNER: I'm sorry, Judge. I think he's
13 entitled to finish his answer.

14 MR. KENNEDY: I'm sorry, sir.

15 THE COURT: Yes, you can finish your answer,
16 Mr. Ashworth.

17 THE WITNESS: Yeah. I mean, there's a limit to
18 each component of our bonus program.

19 BY MR. KENNEDY:

20 **Q.** So you can -- and in a given year with your bonus
21 program, you can double your income, can you not, sir?

22 **A.** Yes.

23 **Q.** In fact, one year, I think 2015, you just about tripled
24 your income, did you not?

25 **A.** I don't remember.

1 **Q.** Was your base \$50,000 in 2015 and you made \$140,000
2 that year, sir?

3 **A.** I don't remember.

4 **Q.** And then two years later in 2017 you were back down to
5 \$62,000. Do you remember that, sir?

6 **A.** What year?

7 **Q.** 2017.

8 **A.** I'm, I'm sorry. Would you repeat the whole question?

9 **Q.** Yes. Sir, in 2015 your base was approximately \$50,000.
10 And with bonuses, you made \$140,000 in 2015. Do you
11 remember that?

12 **A.** I, I don't recall the exact amount of money I made, no.

13 **Q.** Two years later, 2017, you made \$62,000. Do you recall
14 that?

15 **A.** No, not that I --

16 **Q.** Can we agree, sir, that you can, you can double your
17 income with bonuses?

18 MR. STANNER: Objection, asked and answered.

19 THE COURT: Overruled.

20 You can answer.

21 THE WITNESS: Yes.

22 BY MR. KENNEDY:

23 **Q.** Yes? Now, new business, that's included in your
24 bonus system, is it not?

25 **A.** Yes.

1 **Q.** You -- if you can bring on a new customer, you get a
2 bonus for that also, do you not?

3 **A.** Yes, correct.

4 **Q.** Just to sum up, the more you sell, the more money you
5 can make. True?

6 MR. STANNER: Your Honor, I think the question
7 suggests --

8 THE COURT: Sustained. You've asked him that
9 about three times, Mr. Kennedy.

10 MR. KENNEDY: All right, Your Honor. I'm sorry.

11 BY MR. KENNEDY:

12 **Q.** Sir, knowing and understanding your, your
13 compensation system -- McKesson creates your
14 compensation system; correct?

15 **A.** Yes.

16 **Q.** And knowing and understanding your compensation system,
17 can we agree that McKesson put the sales reps basically in
18 the middle of their program to monitor controlled
19 substances? True?

20 **A.** It was just another function of our, of our job duties.

21 **Q.** Well, sir, McKesson established a system where the
22 salespeople played a key role in knowing the customer and
23 preventing diversion. Is that true, sir?

24 MR. STANNER: Your Honor, it calls for speculation
25 as to the -- what McKesson was intending to do or what

1 McKesson did. He can ask Mr. Ashworth what he knows.

2 THE COURT: Well, if he knows. He can answer the
3 question if he knows.

4 THE WITNESS: Would you please ask the question
5 again?

6 BY MR. KENNEDY:

7 Q. Sir, knowing and understanding the compensation
8 system, McKesson established a monitoring system where
9 the salespeople played a key role in knowing the
10 customer and in preventing diversion. Do you agree?

11 A. I don't know what that has to do with the pay, what I
12 get paid. Is that what you're -- I'm sorry, I don't
13 understand what you're getting at.

14 Q. Let me ask one more time, sir. Will you agree that
15 McKesson established a monitoring system where the
16 salespeople played a key role in knowing the customer and in
17 preventing diversion? Would you agree with that statement?

18 A. No. We, we play a role -- we play a role in getting
19 information and collecting information and giving it to
20 regulatory. They are the ones that, that run the regulatory
21 program and monitor purchases.

22 Q. All right, sir. Do you remember having your testimony
23 taken in this case back in July of 2020? I think the
24 lawyers for McKesson were present. Lawyers for Cabell
25 County and Huntington were present. You were asked a series

1 of questions.

2 **A.** Yes.

3 **Q.** And you swore to tell the truth; correct?

4 **A.** Uh-huh, yes.

5 **Q.** And if we can look at Page 55 of the 7-2-20 deposition,
6 lines, starting at line 21 and going over to 21.

7 And, sir, were you asked, "Did you ever know that you
8 were a key -- that you played a key role in knowing your
9 customer and preventing diversion?"

10 And, sir, was your answer "yes" at that time?

11 **A.** Yeah. I don't remember this, this particular question,
12 but I do play a key role in collecting the information and,
13 and while I'm there doing, you know, looking around on-site.
14 But I don't have -- you know, I don't make policy for the
15 regulatory department. I don't analyze the information that
16 I have. I can't explain that.

17 **Q.** Sir, was the question to my answer (verbatim) "yes"?

18 **A.** What's the question?

19 **Q.** My question was, do you agree that you played a key
20 role in knowing the customer and preventing diversion?

21 **A.** Yes, I played a key role in knowing the customer and
22 getting the information to regulatory which is part of their
23 role is preventing diversion.

24 **Q.** And, sir, let's go through it step by step, then, a
25 little bit more specific. The Life-Style Drug Monitoring

1 Program began back in 2007. Do you recall that?

2 **A.** 2007?

3 **Q.** Yes, sir.

4 **A.** Yes.

5 **Q.** And you understand that that was in existence for a
6 short period of time. And then in 2008 the Controlled
7 Substance Monitoring Program, CSMP, came into existence in
8 '08. Do you recall that?

9 **A.** Yes.

10 **Q.** And you were trained, were you not, with respect to the
11 CSMP since 2008?

12 **A.** Yes.

13 **Q.** Every year, sir?

14 **A.** Yes.

15 **Q.** More specifically, McKesson created a CSMP manual and
16 you were trained with respect to the substance of that
17 manual also, were you not?

18 **A.** Yes.

19 **Q.** And the emphasis of the Controlled Substance Monitoring
20 Program, as you were trained, was know your customer. True?

21 **A.** Yes.

22 **Q.** And the customer is the pharmacy. Would I be right?

23 **A.** Yes.

24 **Q.** Now, you understood, sir, then from your training that
25 McKesson had the responsibility to maintain effective

1 controls to prevent diversion? You understood that?

2 MR. STANNER: Objection, Judge, calls for a legal
3 conclusion.

4 THE COURT: Overruled.

5 BY MR. KENNEDY:

6 Q. From your training, sir, you understood that?

7 A. Please ask that question again.

8 Q. You understood from your training that McKesson had the
9 responsibility to maintain effective controls to prevent
10 diversion? You understood that?

11 A. Yes.

12 Q. And as part of that responsibility, sir, you understood
13 that McKesson had the duty to know its customer. True?

14 MR. STANNER: Same objection as to duty.

15 THE COURT: What was your objection?

16 MR. STANNER: Sorry, Judge. It calls for a legal
17 conclusion as to duty.

18 THE COURT: Overruled.

19 BY MR. KENNEDY:

20 Q. Based upon your training, sir, did you understand
21 that McKesson's responsibility extended to having the
22 duty to know its customer? Did you understand that from
23 your training, sir?

24 A. Yes.

25 Q. And you remember that all the way back to 2007 when the

1 training began?

2 **A.** I don't remember training from 2007.

3 **Q.** 2008. I'm sorry. Let's start with the CSMP. You
4 understood that back in 2008 when your training began?

5 **A.** Yes.

6 **Q.** Let's start with on-boarding. You're familiar with the
7 concept of on-boarding, what that is?

8 **A.** Yes.

9 **Q.** And you solicit to get new business, do you not?

10 **A.** Yes.

11 **Q.** And what does that involve? Multiple visits?

12 Brochures? Calls? Tell me that process.

13 **A.** It, it differs from, from prospective -- I guess
14 prospective customers is what we're talking about. A lot of
15 initially what I do is to get to know the prospective
16 customer and build some rapport.

17 And once you get to that, that, through that step, we
18 sell -- what we're trained to sell is our value added
19 programs. And it's what makes us -- what we believe makes
20 us different than our competitors and would peak interest in
21 a prospective customer to come on board to McKesson.

22 **Q.** And can that take months of visits and interaction
23 before somebody actually, let's say, would agree to leave a
24 competitor and come to you?

25 **A.** It varies.

1 **Q.** But once, once you, you have solicited a customer,
2 let's say you have now convinced them to become a McKesson
3 customer, they have to be approved with respect to the sale
4 of controlled substances before McKesson will ship them
5 controlled substances. True?

6 **A.** Yes.

7 **Q.** And if regulatory does not approve a customer, then
8 your labor in getting the customer to agree to come to
9 McKesson can go to waste?

10 **A.** Yes.

11 **Q.** Now, the way that the program is worked with respect to
12 this on-boarding and the approval process, the approval to
13 sell controlled substances, there's a questionnaire
14 involved, is there not?

15 **A.** Yes.

16 **Q.** And it's the responsibility of the sales representative
17 to go to a site visit once the person has agreed to become a
18 customer, the pharmacy has agreed, and then you sit with the
19 pharmacy, the pharmacist, or the owner and you go through
20 and get answers to the questionnaire. Is that how the
21 process works?

22 **A.** In some cases.

23 **Q.** Well, sir, can you, can you cite me an example between
24 2008 and 2013 where anybody in Cabell County other than you,
25 the sales rep, got the questionnaire answered by the

1 pharmacy in the on-boarding process?

2 **A.** I don't remember.

3 **Q.** Sir, the way the system is set up from your education
4 and training, it is your responsibility to go to the new
5 customer and get the questionnaire answered. It is your
6 responsibility, is it not?

7 **A.** Yes, correct.

8 **Q.** And you've done it 100 times?

9 **A.** I've done it quite often, yes.

10 **Q.** The questionnaire has got the name of the prospective
11 pharmacy. True?

12 **A.** Yes.

13 **Q.** DEA number?

14 **A.** Yes.

15 **Q.** Location?

16 **A.** Yes.

17 **Q.** Asks questions about their quantities of controlled
18 substances including hydrocodone and oxycodone; correct?

19 MR. STANNER: Objection, vague as to time period.

20 BY MR. KENNEDY:

21 **Q.** 2008, sir.

22 **A.** I'm trying to remember what the questionnaire looked
23 like. It looked totally different in 2008 than it does now
24 and that's why it's hard to answer.

25 **Q.** It asks about controlled substances; correct? Every

1 version of it from 2008 until today asks about controlled
2 substances, does it not?

3 **A.** Yes, in some form or fashion, yes.

4 **Q.** It asks about whether or not they're going to buy from
5 other wholesalers. True?

6 **A.** Yes.

7 **Q.** And many iterations of the questionnaire have always
8 asked about pain clinics; correct?

9 **A.** Yes.

10 **Q.** And there's always been a section there for your
11 observations. True?

12 **A.** Yes.

13 **Q.** You take photos. Your responsibilities when you're
14 doing this site visit and getting the questionnaire
15 answered, you also take photos, do you not?

16 **A.** Yes, correct.

17 **Q.** Then that's all provided to Regulatory Affairs and they
18 make the decision as to whether or not they're going to sell
19 controlled substances?

20 **A.** That's part of the information they get to make that
21 decision.

22 **Q.** And if they decide they're not going to sell controlled
23 substances and the approval doesn't come through, then you
24 don't get a bonus for a new customer. True?

25 **A.** Yes.

1 **Q.** Now, let's talk about after the pharmacy becomes a
2 customer, if we could.

3 After they've now been approved to be shipped
4 controlled substances, the monitoring program, sir, as you
5 were trained and as it was established, after someone
6 becomes a customer, the program is set up whereby the sales
7 representative is in a position to prevent or protect their
8 customer from being reviewed or investigated by Regulatory
9 Affairs. True?

10 MR. STANNER: Objection, argumentative, compound.

11 THE COURT: Overruled. You can answer if you can.

12 THE WITNESS: I don't agree with that statement.

13 BY MR. KENNEDY:

14 **Q.** Sir, the CSMP, Controlled Substance Monitoring
15 Program, it set up thresholds. True? You're familiar
16 with that?

17 **A.** Yes.

18 **Q.** And you understand -- the Court's heard a lot about
19 thresholds. But thresholds are a limitation on different
20 controlled substances as to how much a pharmacy can be
21 shipped per month. True?

22 **A.** Yes.

23 **Q.** So Smith's Pharmacy on Main Street would have a monthly
24 threshold for Oxycontin, or oxycodone, excuse me. True?

25 **A.** Yes.

1 Q. That's how it works. And the thresholds, the
2 thresholds are a limit that is used to monitor the amount of
3 drug being purchased by the pharmacy. True?

4 A. Yes.

5 Q. And if, if one of your customers is always ordering
6 under the threshold, there's no review; correct? They're
7 always ordering under the threshold. That doesn't trigger
8 any review. True?

9 A. Really the questions -- and I'll back up to the
10 previous question.

11 Q. All right.

12 A. These are really a function of regulatory. The -- I
13 guess that's all I have to say is that it's a function of
14 regulatory.

15 Q. I understand, sir. But you knew that there were
16 thresholds, that there were limits, and they were in place
17 to monitor what was being sold to a pharmacy. You
18 understood that?

19 A. Yes.

20 Q. And you understood that if your customer orders under
21 the threshold, there's no trigger of any review. True?

22 A. No, I don't know that. I don't know if there's -- I
23 know we had often our, our Regulatory Affairs rep would call
24 on customers. They do on-site visits. And I don't know
25 that any, any threshold, any visit, or every visit that's

1 triggered, that would be triggered by a threshold.

2 **Q.** Sir, let me ask you this. Between 2008 and 2013 can
3 you name me a single instance where someone from Regulatory
4 Affairs made a site visit to one of your customers in Cabell
5 County?

6 **A.** 2008 through?

7 **Q.** 2013.

8 **A.** Yes, Custom Script. You asked about Custom Script. A
9 Regulatory Affairs person did visit on-site.

10 **Q.** In what year, sir?

11 **A.** I know of 2013.

12 **Q.** I'm talking about prior to that, sir. We've had a lot
13 of testimony about changes in 2013. That's why I'm saying
14 '08 to '13. Do you remember any single Regulatory Affairs
15 person making an on-site visit to one of your Cabell County
16 pharmacies between '08 and '13, sir?

17 **A.** I can't remember -- I don't know if they have. I don't
18 remember them making any, any visits.

19 **Q.** So we talked about if a customer stays under the
20 threshold. If the customer orders over their threshold, do
21 you understand that that would trigger a review? You
22 understood that?

23 **A.** I don't, I don't, I don't think just because a customer
24 hits their threshold, that triggers it, not to my knowledge.
25 I don't know how the regulatory department handles that.

1 MR. KENNEDY: If you can bring up P-42638, please.
2 Don't bring it up.

3 This has been admitted into evidence already, Your
4 Honor.

5 May I approach, Your Honor?

6 THE COURT: You may.

7 MR. KENNEDY: Thank you.

8 BY MR. KENNEDY:

9 Q. Sir, I'm, I'm -- sir, does the top say "Controlled
10 Substance Monitoring Program"?

11 A. Yes.

12 Q. And you told us earlier that you were trained on the
13 manual itself and this is the manual?

14 You can go to Page 6, if you would, the bottom
15 right-hand corner.

16 A. Okay.

17 Q. If you go down to the bottom it says "Threshold
18 Excursion." That is, that is when somebody orders over
19 their threshold. That's what an excursion is, is it not?

20 A. I, I think this -- I'm not familiar with this document
21 and it --

22 Q. Sir, --

23 A. It looks like a -- it may be operations, for operations
24 because there's, there's a statement of retail national
25 accounts which is not, not something, not an area I would be

1 responsible for.

2 **Q.** Sir, I will represent to you that this has already been
3 admitted into evidence and established that this is the 2008
4 Controlled Substances Monitoring Program manual that you
5 were trained on. All right?

6 **A.** I don't remember.

7 **Q.** See if you remember this. Go down to the bottom of
8 Page 6. And does it state, "Once a customer has reached
9 their monthly maximum threshold amount, all subsequent
10 orders for that item will be blocked. This triggers the
11 level review process as detailed in level review steps
12 below."

13 And if you turn the page, does 221 state, "Level I
14 review. A Level I review is required for every threshold
15 excursion. DC management is required to conduct the Level I
16 review."

17 Is that consistent with your training, sir?

18 **A.** When we first started the program, that's when we did
19 the Level I questionnaire. And, and in the beginning it had
20 us doing it -- the sales folks doing the Level I. But
21 eventually I think it, it, it was handled by the
22 distribution center as far as I can remember.

23 **Q.** Are you part of DC management?

24 **A.** No.

25 **Q.** This says DC management is required to conduct the

1 Level I reviews. Did you just say you were doing it?

2 **A.** On occasions when the program first started, but we
3 don't even do the Level I review. In fact, if that's what
4 you're referring to, Level I questionnaire --

5 **Q.** That's right here. But let's go back. So at least
6 based upon this, if a customer of yours orders over their
7 threshold, there's going to be a Level I review, true, based
8 upon what we've seen?

9 MR. STANNER: Your Honor, I'm going to object to
10 foundation if he's asking about the document. He said he's
11 not familiar with it.

12 THE COURT: Well, he said he's not familiar with
13 it, Mr. Kennedy. You're asking him about it anyway. I'll
14 sustain the objection.

15 BY MR. KENNEDY:

16 **Q.** Sir, McKesson set up a -- its program starting in
17 2008 where you could warn the customer if they were
18 approaching their threshold so that they wouldn't order
19 it and lead to a review; correct? You could warn them
20 as their sales rep. True?

21 **A.** It --

22 **Q.** Is that true?

23 **A.** When the program started, there was a period that we
24 were, we were given the information to let the customer know
25 they were approaching their, their, their threshold because

1 it was all new and it required some explanation.

2 **Q.** Sir, that, that ability of the sales rep to warn the
3 customer, that ability of the sales rep existed until 2013,
4 for five years, sir, did it not?

5 **A.** I don't remember when it ended.

6 **Q.** Well, five years wouldn't be the beginning of the
7 program. Can we agree?

8 **A.** I, I don't remember when it started and it stopped.

9 **Q.** Sir, you did -- your practice was to do more than just
10 that, though, sir. You as the sales rep would not only call
11 and warn the customer they were getting close to the
12 threshold, but you would actually ask the customer if they
13 wanted to increase their threshold. True? You would ask
14 them if they wanted to increase their threshold after your
15 warning. Is that accurate?

16 **A.** I would, I would ask if they, they needed a threshold
17 change. And if they did, that would start the whole
18 threshold request procedure.

19 **Q.** Well, sir, when they're coming up and getting close to
20 their threshold, you're not asking them if they want to
21 lower their threshold, sir. You're asking if they want a
22 threshold increase. True? True?

23 **A.** Yes.

24 **Q.** Sir, you were even systematically sent threshold
25 warning reports so you knew which customers to call to keep

1 them from ordering over their thresholds and triggering
2 investigations, a daily report, were you not?

3 MR. STANNER: Objection, Your Honor, vague as to
4 time frame.

5 BY MR. KENNEDY:

6 **Q.** Up to 2013 is where -- from 2008 to 2013.

7 **A.** I don't remember getting that that often or getting it
8 that, that -- I guess up to 2013. To me, it, it was a brief
9 time that we got that information and I can't remember how
10 long it was.

11 **Q.** But you do remember getting that information?

12 **A.** Yeah, there was a time that we got it.

13 **Q.** And, sir, would I be correct that not only were you --
14 the sales folks were calling to warn the customer, but the,
15 but the customer also got a warning on their statement and
16 they also got a call from the call center in Texas called
17 Service First. True? Three warnings?

18 MR. STANNER: Objection, speculation and compound.

19 THE COURT: Well, if he knows, he can answer the
20 question. But --

21 THE WITNESS: All I know is what my role was at
22 the time and, and if that was the time period you're talking
23 about that we were given the information to, to, what the
24 customer knows, that they were approaching a threshold, I
25 would have only known what I would have gotten. I wouldn't

1 have known what Service First was doing.

2 BY MR. KENNEDY:

3 Q. Fair enough. Now, sir, beyond this, beyond this
4 warning that you were, you were able to provide, you had
5 a further ability, did you not, sir, to protect or
6 prevent your customer from being investigated by
7 Regulatory Affairs, did you not?

8 A. No.

9 Q. Well, sir, you told us that -- you told us that you
10 conducted Level I reviews. True?

11 A. At some point.

12 Q. And, sir, will you disagree if I said you were doing
13 Level I reviews from 2005 to 2013?

14 A. I can't remember how long we did them.

15 Q. And, so, sir, if in the Level I review being done by
16 the sales rep, if you find and conclude under Level I review
17 that everything is fine, then there's no elevation to Level
18 II when Regulatory Affairs gets involved; correct?

19 A. No, I don't believe that's correct.

20 Q. Can you tell the Court what was involved with a Level I
21 review, if you remember?

22 A. I'm sorry, I didn't hear that. Would you please --

23 Q. Can you tell the Court what was involved with the Level
24 I reviews? Level I reviews were only done when your
25 customer had ordered over their threshold. That's what we

1 just read. Correct?

2 **A.** Yes.

3 **Q.** And it's being done by a sales rep for a certain period
4 of time; correct?

5 **A.** Yes.

6 **Q.** And you personally did them, did you not?

7 **A.** Yes.

8 **Q.** And, sir, your, your commitment with respect to your
9 responsibilities under the Controlled Substances Monitoring
10 Program, your commitment to that responsibility wasn't
11 different outside of Cabell County as it was inside of
12 Cabell County, was it?

13 **A.** Correct.

14 **Q.** And if we can have 28152, please.

15 MR. KENNEDY: If I can approach.

16 THE COURT: Yes.

17 MR. KENNEDY: Thank you.

18 THE COURT: Do you have a copy of this, Mr.
19 Stanner?

20 MR. STANNER: I do. I have one from yesterday.
21 I'll wait for the Court to have one.

22 Your Honor, I'm going to object to the document, if the
23 Court's had a chance to look at it. What this appears to be
24 is a collection of various forms, some of which are
25 Mr. Ashworth's, some of which are not, some of which are in

1 West Virginia, some of which are in Kentucky, some in
2 Colorado, but none of them in Cabell County.

3 THE COURT: What are you going to do with this,
4 Mr. Kennedy?

5 MR. KENNEDY: Yes, Your Honor.

6 Your Honor, this was an exhibit used during
7 Mr. Gustin's deposition. So what we did, we took the same
8 exhibit and we marked it as an exhibit in this proceeding.

9 This is 26 Level I reviews by Mr. Ashworth. No
10 question, the first review is not Mr. Ashworth. The last
11 four are not Mr. Ashworth. The middle 26 are his.

12 Your Honor, we are offering this simply for state of
13 mind. I'm going to ask him a few questions. This is for
14 state of mind of this witness, Your Honor, state of mind.
15 It has no geographic boundaries. He has already told us
16 that he took his responsibility inside of Cabell County and
17 outside of Cabell County the same. So we will take off the
18 first piece and the last piece.

19 THE COURT: Well, you're not going to go through
20 all 22 of them, are you?

21 MR. KENNEDY: Pardon me?

22 THE COURT: You're not going to go through all 22
23 of them, are you?

24 MR. KENNEDY: No, Your Honor. I plan on stopping
25 at number three.

1 THE COURT: I'll overrule the objection and let
2 you do three of them.

3 MR. KENNEDY: Thank you. We would offer this into
4 evidence, Your Honor.

5 THE COURT: Well --

6 MR. KENNEDY: And it's 28152.

7 MR. STANNER: Same objection, Your Honor.

8 THE COURT: I'm not going to -- I'll let you
9 question him about the three that you're going to question
10 him about.

11 MR. KENNEDY: All right. Thank you.

12 THE COURT: We'll see whether those are admissible
13 or not. But the rest of it --

14 BY MR. KENNEDY:

15 Q. Sir, if you would go to the second page, please.

16 MR. KENNEDY: Can we pull it up, Your Honor, or
17 should we keep it off the screen?

18 THE COURT: I can see it right here.

19 MR. KENNEDY: All right.

20 MR. STANNER: I'm sorry, Mr. Kennedy, I didn't
21 hear the page.

22 MR. KENNEDY: Page 2.

23 BY MR. KENNEDY:

24 Q. Sir, Page 2 up at the top, does that say "CSMP
25 Observation Level I Documentation Form"?

1 **A.** Yes.

2 **Q.** And your name, Tim Ashworth, yes. So you would be the
3 one doing this Level I observation. True?

4 **A.** Yes.

5 **Q.** And it identifies you as an RSM, Regional Sales
6 Manager. Yes?

7 **A.** Retail Sales Manager.

8 **Q.** I'm sorry. And the purpose of this is that this
9 customer exceeded their threshold for oxycodone. True? Is
10 that true? Do you see on the left it says "Purpose" and it
11 says "Exceeded Threshold"?

12 **A.** Yeah, but that oxycodone is not my handwriting. That's
13 why I'm hesitant to --

14 **Q.** Is that your name on the form?

15 **A.** That's my name on the form, but that's not my
16 handwriting. So I'm not sure --

17 **Q.** Go down and look at the first question. The first
18 question on this form is: "Are you aware that you have
19 exceeded your threshold? If so, can you explain?"

20 And typed under that is the word "yes."

21 Do you see that?

22 **A.** Yes.

23 **Q.** There's no explanation. True?

24 **A.** Correct.

25 **Q.** And I'm not even going to do three. I'm going to

1 represent to you, sir, that in Exhibit 28152 you answered 26
2 Level I questionnaires with a customer, 26 occasions with a
3 customer over the threshold, and not one of the 26 has an
4 explanation as to why the customer ordered over their
5 threshold. I'm going to make that representation to you.
6 We're not going to go through all 26.

7 If you want to check, counsel, please do.

8 But I'm not going to question you on all of them. All
9 right?

10 **A.** But, you know, just so you understand, this, this Level
11 I isn't -- it wasn't the only step in the progress -- or the
12 process back then. This was just to, to, to trigger the
13 initial conversation.

14 I don't know that any Level I form -- I mean, we quit
15 doing them at some point because I don't know that it was
16 used in the, the information they got to do their due
17 diligence, the regulatory department. So --

18 **Q.** Sir, we've read the CSMP. Level I was required every
19 single time a customer ordered over the threshold, was it
20 not? Is that correct?

21 **A.** Yes.

22 **Q.** And it said that the distribution center management was
23 to do the Level I; correct?

24 **A.** Well, that said it -- is that the document that I'm not
25 familiar with?

1 **Q.** Yes, sir. Is that what it said?

2 **A.** I'm not familiar with the document that you're getting
3 that from. That, that's not what I understood when we first
4 started doing this, that the salespeople were to do the
5 Level I observation. And it was a communication to the
6 store to let them know that, that they hit their threshold.

7 **Q.** And you did 26 of them that we've been able to find;
8 correct?

9 MR. STANNER: Judge, I'm going to renew at this
10 point. We're talking about 26 of them now. I don't see how
11 it's state of mind.

12 THE COURT: Well, overruled.

13 Go ahead, Mr. Kennedy, and --

14 BY MR. KENNEDY:

15 **Q.** Sir, let me ask you this. We read through.
16 There's a Level I investigation, a Level II, and a Level
17 III. If you don't get past Level I where you're doing
18 investigation, it never gets to a Level II or III.
19 True?

20 **A.** No. That's, that's, that's not my memory of how it
21 worked. And I, I wouldn't know beyond Level II or III
22 because that's a function of regulatory. I, I don't think
23 there's anything on this form that would stop further
24 investigation of a pharmacy that, that, that was being
25 looked at for a suspicious order. To my knowledge, these

1 forms weren't used for that.

2 **Q.** Sir, let me ask you. At any time -- these Level Is,
3 these 26 cover a two-year period. At any point in time
4 after did you these, after they're turned into Regulatory
5 Affairs, did anybody come to you and say, "Mr. Ashworth,
6 you're not doing these correctly. We need an explanation as
7 to why the customer ordered over their threshold." Did
8 anybody come to you and tell you that?

9 **A.** Yeah, there, there was a point that we were asked to
10 get more detail. And I'm not sure if it was on this one and
11 it could have been. But what we found often, especially
12 when you're looking at 2008, 2009, the independent -- the
13 pharmacies, the pharmacies' owners weren't really accustomed
14 to the distributor asking these kind of questions. And
15 often in the beginning, I had quite a push-back in trying to
16 get information from them.

17 **Q.** It took them two years to come to you and tell you you
18 needed to answer that question? Is that what you're saying?

19 **A.** I don't remember when, when they said that.

20 **Q.** These Level Is cover two years. So it would have been
21 sometime after two years?

22 **A.** I can't remember.

23 **Q.** Sir, let me -- you were doing the site visit, the
24 initial questionnaire for the new customers; correct?

25 **A.** Yes.

1 Q. And at certain points in time, you were warning
2 customers when they got close to their threshold; correct?

3 A. Yes.

4 Q. A certain period of time -- well, a certain period of
5 time you were doing these Level I reviews; correct?

6 A. Yes.

7 Q. When a client or a customer wanted a threshold
8 increase, you would fill out the TCR request form; correct?

9 A. Yes.

10 Q. And, sir, the truth is that the sales reps were the
11 eyes and ears of Regulatory Affairs because McKesson did not
12 give Regulatory Affairs the resources or the personnel to be
13 their own eyes and ears. That is true, is it not, sir?

14 A. No, I don't agree with that statement.

15 MR. KENNEDY: Can you give me 13385, please?

16 May I approach, Your Honor?

17 THE COURT: Yes.

18 BY MR. KENNEDY:

19 Q. And, sir, going all the way to the bottom, an email
20 from Dave Gustin to a large group of people, do you see
21 that's dated Wednesday, February 10, 2010?

22 A. Yes.

23 Q. And do you see your name, Tim Ashworth? It's on the
24 second line from the bottom toward the left.

25 A. Yes, I see that.

1 Q. And Mr. Gustin, he was the Director of Regulatory
2 Affairs for the region that Cabell County is in, was he not?

3 A. Yes.

4 Q. And the subject is pill mills, is it not? Do you see
5 that?

6 A. I'm -- oh, the subject line?

7 Q. Yes. It's on the first page right there at the bottom,
8 subject. Sir, is the subject pill mills?

9 A. I'm sorry. I'm still -- oh, yeah, I see. Yes.

10 MR. KENNEDY: And, Your Honor, we would like to
11 offer into evidence P-13385. It's on the stipulation under
12 801(d)(2)(D), a statement of employee in the course of his
13 employment, Mr. Gustin.

14 THE COURT: Any objection?

15 MR. STANNER: Well, Your Honor, I guess it depends
16 on the part -- I know it's discussing a pharmacy that's not
17 in Cabell. But if it's just for the bottom email, no
18 objection.

19 MR. KENNEDY: Yes, Your Honor, that's what it's
20 for.

21 THE COURT: All right. It's admitted.

22 BY MR. KENNEDY:

23 Q. If you go to the next page, you'll see what
24 Mr. Gustin sent out. He says, "Team, this is one reason
25 why we do what we do. It is so easy for any of our

1 customers to be involved with one of these pill mills
2 either knowingly or unknowingly. We would be
3 implicated. Like it or not our best line of defense
4 isn't really me since there is one of me for eight DCs
5 and twice as many states. It is up to the rep who knows
6 the customer better than anyone and is more in tune with
7 their business and the areas in which they function. We
8 really count on you to be our eyes and ears in the
9 field."

10 Is that what he communicated to you, sir?

11 **A.** Yes.

12 MR. KENNEDY: I have no further questions, Your
13 Honor.

14 THE COURT: Mr. Stanner, do you want to question
15 him?

16 MR. STANNER: Yes, Your Honor. Thank you.

17 CROSS EXAMINATION

18 BY MR. STANNER:

19 **Q.** Good afternoon, Mr. Ashworth.

20 **A.** Good afternoon.

21 **Q.** Before anything else, do you still have that email in
22 front of you?

23 **A.** Yes.

24 **Q.** Can you read the next couple sentences in that email?
25 I'm going to ask you to lean into the microphone.

1 **A.** The last two sentences?

2 **Q.** That's right, after the sentences that Mr. Kennedy
3 read.

4 **A.** One second, please.

5 "It is the DC personnel who fill orders and get to know
6 what is normal and what looks abnormal. It is the DCM," the
7 distribution center manager, "who sees a trend in the, in
8 the THD increase request for a certain account. It is, it
9 is all of us doing our part. Thanks for your diligence."

10 **Q.** Mr. Ashworth, when you got that email, did you take it
11 to mean that Mr. Gustin was too busy to do his job so he
12 needed you to do it for him?

13 **A.** No.

14 **Q.** What did you take it to mean?

15 **A.** That, that we, we have to all do our part and it is
16 important if we see something to say something. And I think
17 it was just that simple. He wanted to emphasize we need to
18 work together as a team to, to prevent, prevent diversion.

19 **Q.** Do you do that at McKesson?

20 **A.** Yes.

21 **Q.** Do you think you do your part?

22 **A.** Yes.

23 **Q.** To use your words, if you see something, do you say
24 something?

25 **A.** Yes, correct.

1 Q. We'll come back to that. First I want to give you a
2 chance to tell us where you're from.

3 A. I'm -- I live in Charleston, here in Charleston.

4 Q. And how long have you lived in Charleston?

5 A. Since 2008.

6 Q. Where did you live before that?

7 A. I lived in Hamlin.

8 Q. And I think you told us that you went to Marshall.

9 Have you lived in West Virginia your whole life?

10 A. Yes.

11 Q. You described your territory earlier for the Court. Is
12 Charleston part of your territory?

13 A. Yes, correct.

14 Q. Do you have customers in this area?

15 A. Yes, I, I have, I have one customer. It's Kines Family
16 Pharmacy in Sissonville.

17 Q. Okay. And you said you have customers in Huntington
18 and Cabell County; is that right?

19 A. I currently have three customers there.

20 Q. Okay. We'll come back to that. In Huntington/Cabell
21 County do you have customers like Rite-Aid?

22 A. No.

23 Q. Okay. Who handles those stores for McKesson?

24 A. The retail national accounts.

25 Q. Mr. Kennedy mentioned a pharmacy along the way called

1 Custom Script. Do you remember that?

2 **A.** Yes.

3 **Q.** Was Custom Script a customer of yours?

4 **A.** Yes.

5 **Q.** And when was that?

6 **A.** 2010 to 2013.

7 **Q.** Was Custom Script a typical pharmacy like Kines Family
8 Pharmacy?

9 **A.** No. It's, it's what's called a compounding pharmacy.

10 **Q.** Do you know what that is?

11 **A.** It's, it's a specialty pharmacy that specializes in
12 compounding specific medications that aren't available in
13 the marketplace from a distributor like McKesson.

14 **Q.** So if you walked into Custom Script in 2010, 2011 are
15 there greeting cards and shampoo and things like that?

16 **A.** No, no. It's -- it doesn't -- it's not like your
17 typical retail pharmacy, no.

18 **Q.** Does a compounding pharmacy buy its compounding
19 materials from McKesson?

20 **A.** To my knowledge, McKesson doesn't carry that, that kind
21 of product.

22 **Q.** So if they get those -- do you know where they get the
23 compounding material?

24 **A.** A large source that I know of, that I've heard of is a
25 company called PCCA. And all they do is carry the bulk, the

1 bulk ingredients that compounding pharmacies use.

2 **Q.** So if a compounding pharmacy is getting the bulk
3 ingredients from someone else, what do they get from
4 McKesson?

5 **A.** They get, they get the normal medications that
6 compounding distributors wouldn't carry. It's just the
7 normal prescription medications that are manufactured by a
8 manufacturer.

9 **Q.** Okay. And would that include controlled substances?

10 **A.** Yes.

11 **Q.** And, so, can that explain a difference in the
12 controlled and non-controlled ratio at a place like Custom
13 Script?

14 **A.** Yes.

15 **Q.** How does it explain?

16 **A.** Well, a lot of their non-controls, it's compounded.
17 And, and it, it wouldn't have the normal retail traffic of
18 non-controlled patients getting non-controlled prescriptions
19 filled. So that, that's how I -- I think it would kind of
20 skew the number.

21 **Q.** Have you been to Custom Script Pharmacy, Mr. Ashworth?

22 **A.** Yes.

23 **Q.** How many times?

24 **A.** I can't remember.

25 **Q.** Did you know a little bit about their business back in

1 2010, 2011?

2 **A.** I'm sorry? Repeat the question.

3 **Q.** Did you know a little bit about their business back in
4 2010, 2011?

5 **A.** Yes.

6 MR. STANNER: Can I have P-13714, please?

7 Permission to approach.

8 At this time, if it's not already in evidence, we'll
9 move it in.

10 THE COURT: Any objection?

11 MR. KENNEDY: No objection.

12 THE COURT: It's admitted.

13 MR. ACKERMAN: No, no objection, Your Honor.

14 THE COURT: Okay. It's admitted.

15 BY MR. STANNER:

16 **Q.** Mr. Ashworth, do you recognize this document?

17 **A.** Yes.

18 **Q.** Is this a TCR, Threshold Change Request form from
19 Custom Script Pharmacy?

20 **A.** Yes, correct.

21 **Q.** It has a different name at the top. Do you know why
22 that is?

23 **A.** When they initially opened, it was called Medicine
24 Cabinet. And at some point, they changed their name to
25 Custom Script.

1 **Q.** Okay. Down below do you see where it says -- threshold
2 change, that's a term that I think Mr. Kennedy mentioned. A
3 threshold change form gets filled out when a customer
4 requests a change to the threshold; right?

5 **A.** Yes, correct.

6 **Q.** Okay. And when that happens, the customer is asked to
7 give a reason; is that right?

8 **A.** Yes, correct.

9 **Q.** And did you do this threshold change with Custom Script
10 back in 2010?

11 **A.** Yes.

12 **Q.** Okay. Did Custom Script give you a reason why they
13 needed an increase in their threshold for oxycodone?

14 **A.** Yes.

15 **Q.** Do you see down below where it says "reason for
16 requested change"?

17 **A.** Yes.

18 **Q.** Okay. And it states, "Med Cab Pharmacy is a new
19 pharmacy that has been aggressively marketing their
20 compounding business to Cabell-Huntington Hospital's
21 oncology clinic." Is that right?

22 **A.** Yes, correct.

23 **Q.** And is that true? Is that your understanding that at
24 the time Custom Script was doing -- taking on new business
25 from an oncology clinic?

1 **A.** Yes, and Hospice of Huntington.

2 **Q.** And then if you go on, there's also -- it says
3 Dr. Fisher's Huntington Spine and Rehab Clinic. Right?

4 **A.** Yes.

5 **Q.** And then a pain management clinic?

6 **A.** Yes, that's correct.

7 **Q.** And are those the kinds of places that are going to
8 prescribe more opioids than a typical doctor?

9 **A.** Yes.

10 **Q.** Are you familiar with Huntington Hospital's oncology
11 clinic?

12 **A.** I know of it. It's, it's pretty -- it's a pretty big
13 operation.

14 **Q.** And, so, my, my question, Mr. Ashworth, is does this
15 tell you anything about the likely ordering habits of a
16 customer like this one versus a typical family pharmacy like
17 Kines?

18 **A.** Yes, it would.

19 **Q.** What would it tell you?

20 **A.** Well, it, it's the -- it shows that the, the patient
21 base that these, this pharmacy was servicing, it's coming
22 from facilities that would -- the physicians would write
23 higher amounts of controlled drugs.

24 THE COURT: Mr. Stanner, I apparently admitted
25 this yesterday, so I've now admitted it twice. You can have

1 one or the other.

2 MR. KENNEDY: I call, Your Honor.

3 MR. STANNER: Thank you. I thought it was. I
4 appreciate that, Your Honor. Thank you.

5 BY MR. STANNER:

6 Q. The -- just, just to make sure we have it, when a
7 patient is going to an oncology clinic, what's that for?

8 A. That's for cancer, a cancer patient.

9 Q. And when a patient is going to the Hospice of
10 Huntington, what's that for?

11 A. That's end of life, a patient that's end of life.

12 Q. And are those typically patients that require more
13 opioids?

14 A. Yes.

15 Q. Now, you were asked about Level I reviews and, and in
16 this case a threshold. What happens after you fill out a
17 document like this, or a Level I review?

18 A. It's submitted to regulatory.

19 Q. Okay. Do you approve the threshold request that you
20 get from a place like Custom Script?

21 A. No.

22 Q. Who does approve it?

23 A. Regulatory.

24 Q. Do they always approve it?

25 A. Do they always approve a Threshold Change Request? No.

1 Q. So when it goes to regulatory, what do you do next?

2 A. I, I wait for their review and then they -- they'll
3 tell me whether it's approved or not approved.

4 Q. Okay. Looking just again at that same document, it
5 goes on to say -- it talks about them aggressively marketing
6 to these practices; right? And then at the bottom it says,
7 "In doing so Chad." Who's Chad?

8 A. He's the, the pharmacist in charge and the pharmacy
9 manager.

10 Q. And do you know -- what's his last name?

11 A. Chad Wallace.

12 Q. Do you know Mr. Wallace?

13 A. Yes.

14 Q. How long have you known him?

15 A. I've known him for several years.

16 Q. What's his business?

17 A. His, his area, the area of pharmacy that he practices
18 has been compounding and IV therapies, which are -- which
19 he, he both -- both of those items in the past and, and the
20 future he, he works with the healthcare facilities and the
21 physicians because those type, those type of medications, IV
22 therapies and compounds, require a lot of hands-on
23 knowledge. And it requires direct communication with the
24 physician. And that's, that's always been his area of
25 expertise.

1 **Q.** So it says down below that in doing so, Chad
2 anticipates a 25 percent surge in usage of products
3 containing oxycodone. Do you know if that surge came to
4 pass, Mr. Ashworth?

5 **A.** I, I don't think it did. I, I don't recall that it
6 ever worked out that way, no.

7 **Q.** So in the year after this TCR, just talking about the
8 year after, in 2011 did Custom Script order more opioids
9 from McKesson?

10 **A.** Yes. It did go up for that year.

11 **Q.** Okay. And then what happened after that?

12 **A.** It went down.

13 **Q.** Do you know why it went down?

14 **A.** No.

15 **Q.** Did Custom Script go out of business?

16 **A.** No.

17 **Q.** Then why --

18 **A.** They focused on their core business which is
19 compounding and IV therapies.

20 **Q.** Do you know the number, how many opioids Custom Script
21 did order in 2011?

22 **A.** Not -- no.

23 **Q.** Did you -- I'm sorry. When Custom Script was your
24 customer, did you have a sense that they were a high volume
25 opioid purchaser, a low volume opioid purchaser?

1 **A.** I didn't -- I thought they were lower amount. I
2 thought they ordered lower amounts of controlled drugs from
3 us.

4 **Q.** Okay. But within the years 2010, 2011 were high?

5 **A.** I'm sorry. Repeat the question.

6 **Q.** Sure. Within the years that they were your customer, I
7 thought your testimony was that the numbers were higher in
8 2010 and '11?

9 **A.** 2011, yes.

10 **Q.** Okay. And then in 2012 and 2013?

11 **A.** It went down significantly.

12 **Q.** Okay. I want to show you that actually.

13 MR. STANNER: Can we look at P-13284? This should
14 also be in evidence already.

15 Permission to approach?

16 THE COURT: How much more are you going to have
17 with him, Mr. Stanner?

18 MR. STANNER: I can try and go fast if Mr. Kennedy
19 doesn't have too much redirect. I could try and wrap it up
20 if you prefer, Your Honor, five minutes.

21 THE COURT: Mr. Kennedy, are you going to have a
22 good bit of redirect here?

23 MR. KENNEDY: So far, Your Honor, no.

24 THE COURT: Well, hopefully we can get
25 Mr. Ashworth done today maybe by -- of course, I've slowed

1 you down here. But if you get going, maybe we can finish
2 with you, Mr. Ashworth.

3 MR. STANNER: I'll try my very best. I'm quite
4 sure Mr. Ashworth does not want to have to come back
5 tomorrow.

6 Your Honor, I believe it's already in evidence unless
7 plaintiffs tell me otherwise. It should already be in
8 evidence.

9 BY MR. STANNER:

10 Q. So let's take a look if we can quickly,
11 Mr. Ashworth.

12 MR. STANNER: Can we go to the next page, please?
13 Can you go to Page 2 of the document? I'm sorry, not Page
14 2, Chris, Page 3.

15 BY MR. STANNER:

16 Q. Mr. Ashworth, do you recognize this?

17 A. Yes.

18 Q. Is this the 2013 questionnaire for the same pharmacy?

19 A. Yes. They changed locations at this point. They
20 changed their name and they changed locations. They
21 opened -- moved the facility to Putnam County.

22 Q. Okay. Let's just jump, if we can, to Page 7.

23 Up at the top there, Mr. Ashworth, do you see where it
24 says "List Wholesale Distributors and Manufacturers"?

25 A. Yes.

1 Q. And down below it says "Freedom" and "PCCA." Do you
2 see that?

3 A. Yes.

4 Q. And next to that it says "bulk powders." Can you tell
5 us what that refers to?

6 A. That's, that's the com- -- that's the product they use
7 to compound prescription medications.

8 Q. Okay. Let's turn to Page 11 really quickly and look at
9 part B. Do you see Appendix B there?

10 A. Yes.

11 Q. What's listed there?

12 A. Hospice of Huntington.

13 Q. And we saw that on the earlier questionnaire. What do
14 you take from this permit appearing here in 2013?

15 A. They're still servicing Hospice of Huntington.

16 Q. Okay. And the last thing I want to look at if we could
17 is Page 9.

18 Up at the top there Mr. Kennedy made reference to the
19 questionnaires earlier asking about certain controlled
20 substances. Do you see this question?

21 A. Yes.

22 Q. And it, and it asks to list the estimated dosage units
23 dispensed per month for specific controlled substances. Do
24 you see that?

25 A. Yes.

1 Q. And down below it says "hydrocodone"?

2 A. Yes.

3 Q. And what's the number there?

4 A. 1,000 doses.

5 Q. And, so, 1,000 hydrocodone doses a month, is that a lot
6 in your experience?

7 A. No.

8 Q. Down below it says "oxycodone." Do you see that?

9 A. Yes.

10 Q. And that number is 2,000?

11 A. Yes.

12 Q. In your experience, is that a high number or a low
13 number for oxycodone purchases in a month?

14 A. That's a low number.

15 Q. Down below there's a question B. It says, "If any of
16 the above is greater than 5,000 dose units, please provide
17 information."

18 Were any of those numbers above 5,000 for this
19 particular pharmacy in 2013?

20 A. No.

21 Q. Thank you, Mr. Ashworth. If you could -- you can put
22 that aside. I think what you said earlier was that Dave
23 Gustin was the Director of Regulatory Affairs for the
24 region; is that right?

25 A. Yes, correct.

1 Q. And did he ever visit Custom Script?

2 A. Yes, he did.

3 Q. And I think you said that was in 2013?

4 A. Yes.

5 Q. Do you know if he did any other visits?

6 A. I believe he did, yes. Dave -- he lived on the road.
7 He was always visiting -- frequently visiting pharmacies.
8 Sometimes I would call and set up an appointment and be
9 there with him, and sometimes he would just show up
10 unannounced.

11 Q. That's what I wanted to ask you about. Mr. Kennedy
12 asked you to try and remember all the visits he may have
13 taken. Did Mr. Gustin tell you every time he would visit
14 one of your customers?

15 A. No.

16 Q. Did you ever show up with a customer and find out that
17 Mr. Gustin was there?

18 A. Yeah. I've pulled up in a parking lot and he's in the
19 parking lot making observations about, you know, what kind
20 of traffic is coming into the pharmacy and what kind of
21 patients are coming into the pharmacy.

22 Q. Okay.

23 MR. STANNER: I just have a couple more questions,
24 Judge.

25 THE COURT: Okay.

1 BY MR. STANNER:

2 Q. On the first questionnaire that we looked at when
3 we were looking through the customer base, there was a
4 reference to a Dr. Fisher. Do you know a Dr. Fisher?

5 A. I do now.

6 Q. Okay. Did Dr. Fisher run into some -- did he get into
7 trouble with the law at any point?

8 A. I only know what I read in the paper and he lost his
9 license.

10 Q. Okay. When -- do you know about when that was?

11 A. I don't, I don't recall.

12 Q. Do you know if it was before or after his name was on
13 that 2010 questionnaire?

14 A. It was, it was after. It was well after this.

15 Q. Okay. Mr. Kennedy asked you a couple of questions
16 about rebate programs and pricing programs for different
17 drugs. Do you remember those questions?

18 A. Yes.

19 Q. And does McKesson advertise pricing programs just for
20 opioids -- or rebate programs just for opioids or, or
21 something else?

22 A. No. It's for the full line, the total book of
23 business. The incentive is to get all the business, not
24 just any particular class of drugs.

25 Q. You were asked some questions about threshold warnings,

1 Mr. Ashworth, and Level Is. On the Level I forms, after you
2 filled out a Level I, did that mean that a customer would
3 get an increase in their opioids?

4 **A.** No, it did not.

5 **Q.** Did you approve them?

6 **A.** No.

7 **Q.** If a customer asked for an increase, what would happen
8 next?

9 **A.** It would trigger the process of getting, number one,
10 updating the questionnaire if it needed to be updated.

11 Number two, requesting a 90-day dispense report for
12 regulatory to review.

13 And then the third piece of information, the actual
14 TCR, that's where I would ask what, what item they want,
15 they're requesting an increase on. And below that, I would
16 have to document the reason that they're asking for the
17 increase.

18 **Q.** Okay. My last question for you, Mr. Ashworth, if you
19 were to advertise price discounts or rebates to a
20 pharmacist, is the pharmacist going to buy more opioids than
21 they need for the prescription?

22 **A.** No. They, they buy -- they basically replenish the
23 stock that, from prescriptions they're filling that they get
24 from the physicians. And, you know, most independents or
25 any pharmacy business wants to keep a low inventory. So

1 they're only ordering what they're seeing prescriptions for.

2 **Q.** Thank you so much for your time, Mr. Ashworth.

3 THE COURT: Mr. Kennedy, do you have anything
4 else?

5 MR. KENNEDY: Your Honor, I have three minutes.

6 THE COURT: Okay. I'm starting the clock right
7 now.

8 MR. KENNEDY: Four minutes.

9 REDIRECT EXAMINATION

10 BY MR. KENNEDY:

11 **Q.** Sir, I just want to talk about Custom Script for a
12 second. You talked about the controlled substance to
13 non-controlled substance ratio. Do you remember that?

14 **A.** Yes.

15 **Q.** Sir, anything even approaching 50 percent is high in
16 your experience; correct?

17 **A.** I wouldn't make that, that statement because it depends
18 on other factors; what kind of business -- you know, is it a
19 compounding business. There's a lot of other variables that
20 regulatory would review. So I wouldn't be able to make a
21 statement that any percentage is the right percentage or the
22 wrong percentage.

23 **Q.** Can you give me Page 97 of the 6/26 deposition, please.

24 Question: "Okay. Do you have some understanding as to
25 what ratios you want to see per customer?"

1 You said, "70/30 might raise your radar, so to speak."

2 "What's the limit of controls and non-controls that
3 generally seems acceptable when a customer is reporting to
4 you?"

5 "I don't know."

6 Question: "50/50?"

7 Next question, next page, please. "I would think that
8 would be high."

9 Was that your testimony, sir?

10 **A.** I don't remember it, but I see it here.

11 **Q.** Do you realize that Custom Script controls to
12 non-controls ratio was over 90 percent? Did you know that?

13 **A.** That's what I found out in our prep.

14 **Q.** And, sir, two of the four customers that they listed on
15 the threshold change request, two of the four were pain
16 clinics, were they not?

17 **A.** Yes.

18 **Q.** And one of those, one of those doctors was Dr. Fisher.
19 And you know today he got in trouble and he lost his license
20 from the osteopathic board; correct?

21 **A.** Yes.

22 **Q.** And on the questionnaire that was brought to your
23 attention, Dr. Deleno Webb was on that questionnaire, was he
24 not, sir?

25 **A.** Yes.

1 Q. And you understand that Dr. Deleno Webb lost his
2 privileges with the Board of Workers' Compensation because
3 he was prescribing opioids as a psychiatrist. You
4 understand that, sir?

5 A. Yes. And, of course, both of those were well after we
6 noted that on the form, I mean years later.

7 Q. So Dr. Deleno Webb, he lost his privileges in 2005.
8 That was well before that form, sir, wasn't it?

9 A. I'm sorry?

10 Q. In 2005, sir, he lost his privileges with Workers'
11 Comp?

12 MR. STANNER: Just assumes facts not in evidence,
13 Your Honor.

14 BY MR. KENNEDY:

15 Q. Do you understand it was 2005?

16 THE COURT: Overruled. Let's get through this and
17 get it done.

18 BY MR. KENNEDY:

19 Q. Sir, you also testified that Custom Script, in your
20 opinion, bought a low amount of oxycodone. Do you
21 remember that?

22 A. Yes.

23 Q. Would you consider 160,000 units of oxycodone in one
24 year to be a low amount of oxycodone?

25 A. If, if -- if you, if you take that down to the monthly

1 average, no, that's just going to be over 10,000 doses a
2 month. That's, that's a high -- it's above average, but I
3 wouldn't call that a high number.

4 **Q.** And your threshold was set at 30,500, was it not?

5 **A.** I don't, I don't know what the threshold was set at.
6 That's not something -- that's a function of regulatory.

7 **Q.** Well, you looked at the Threshold Change Request.
8 There were 23,500 and you asked for 7,000 more and it was
9 granted, was it not?

10 **A.** I don't recall if it was granted.

11 **Q.** Do you recall that they breached their threshold two
12 dozen times in three months?

13 **A.** I don't -- I'm not notified every time a pharmacy hits
14 a threshold.

15 MR. KENNEDY: I have no further questions. Thank
16 you, sir.

17 THE COURT: All right. Can Mr. Ashworth be
18 excused?

19 MR. KENNEDY: He can, Your Honor. I don't need
20 Mr. Ashworth. I'm sorry.

21 THE COURT: Mr. Ashworth, thank you very much.
22 You're free to go. Thank you, sir.

23 MR. SCHMIDT: Your Honor, just one recordkeeping
24 matter. May I mark as McKesson Demonstrative 1, if you
25 could put it back up, the board that I created with Mr.

1 Oriente?

2 THE COURT: Okay. Oh, there it is.

3 All right. If there's nothing further, I'll see
4 everybody at 9:00 in the morning.

5 (Trial recessed at 5:10 p.m.)
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1 CERTIFICATION:

2 I, Ayme A. Cochran, Official Court
3 Reporter, and I, Lisa A. Cook, Official Court Reporter,
4 certify that the foregoing is a correct transcript from
5 the record of proceedings in the matter of The City of
6 Huntington, et al., Plaintiffs vs. AmerisourceBergen
7 Drug Corporation, et al., Defendants, Civil Action No.
8 3:17-cv-01362 and Civil Action No. 3:17-cv-01665, as
9 reported on May 25, 2021.

10
11 S\Ayme A. Cochran

12 Reporter

13 s\Lisa A. Cook

14 Reporter

15 —

16 May 25, 202117 Date
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